

2373
No. 12206

United States
Court of Appeals
for the Ninth Circuit

GEORGE T. GOGGIN, Receiver of the Estate of
Salsbury Motors, Inc.,

Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST &
SAVINGS ASSOCIATION,

Appellee.

Transcript of Record

Appeal from the United States District Court
for the Southern District of California
Central Division

United States
Court of Appeals
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Salsbury Motors, Inc.,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

GENDEL & CHICHESTER,
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617 S. Olive St.,
Los Angeles 14, Calif.

For Appellee:

HUGH A. STEINMEYER,
G. L. BERREY,
JOHN E. WALTER,
R. H. FABIAN,
650 S. Spring St.,
Los Angeles 14, Calif. [1*]

* Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States
Southern District of California
Central Division

No. 45207-B

In Proceedings For An Arrangement.
In the Matter of SALSBUURY MOTORS, INC.,
a California corporation,

Debtor.

PETITION OF DEBTOR.

To the Honorable Judges of the District Court of
the United States, for the Southern District of
California, Central Division:

This petition of Salsbury Motors, Inc., a California corporation, hereinafter called "Debtor," having its principal place of business in the City of Pomona, County of Los Angeles, State of California, and engaged in the business of manufacturing and selling motor scooters, gasoline engines, in-plant trucks, and related products, respectfully represents:

I.

Debtor, a California corporation, has had its principal place of business in the County of Los Angeles, State of [2] California, within the above jurisdictional district for the six months immediately preceding the filing of this petition.

II.

No bankruptcy proceedings initiated by a petition by or against Debtor are now pending to the Debtor's knowledge and belief.

III.

Debtor is insolvent and proposes an arrangement with its creditors pursuant to the provisiosn of Chapter XI of the Act of Congress entitled "An Act to Establish a Uniform System of Bankruptcy throughout the United States," as amended (hereinafter referred to as the "Bankruptcy Act").

The provisions of the arrangement proposed by Debtor are set forth in the Plan of Arrangement attached hereto marked Exhibit 1 and by this reference incorporated herein as though set forth in full.

IV.

The creditors affected by the Plan of Arrangement are divided into three classes: Bank of America National Trust and Savings Association as the holders of secured notes of the Debtor; Debtors unsecured creditors having claims in excess of \$500; and Northrop Aircraft, Inc. as the holder of unsecured notes of the Debtor.

V.

The schedule hereto annexed marked Schedule A and verified by the oath of Debtor's vice-president contains a full [3] and true statement of all its debts at June 30, 1947, and so far as it is possible to ascertain, the names and places of residence of its creditors and such other statements concerning said debts as are required by the provisions of the Bankruptcy Act. As soon as possible after the filing of this petition Debtor will file supplemental schedules bringing such schedules down to the date of filing of this petition.

VI.

The schedule hereto annexed, marked Schedule B, and verified by the oath of Debtor's vice-president, contains an accurate inventory of all its property, real and personal at June 30, 1947, and such further statements concerning said property as are required by the provisions of the Bankruptcy Act. As soon as possible after the filing of this petition Debtor will file supplemental schedules bringing such schedules down to the date of filing of this petition.

VII.

The schedule hereto annexed, marked Schedule C, sets forth a statement of the executory contracts of Debtor.

VIII.

The statement hereto annexed, marked Exhibit 2, and verified by the oath of the Debtor's vice-president, contains a full and true statement of its affairs as required by the provisions of the Bankruptcy Act.

IX.

That hereto annexed, marked Exhibit 3, certified by [4] as assistant secretary of the Debtor, is a full, true and correct copy of a resolution adopted by Debtor's Board of Directors on August 19, 1947, authorizing the filing of this petition.

X.

Debtor's creditor, Bank of America National Trust and Savings Association, shortly before the filing of this petition exercised its alleged right

of set-off and applied the money in Debtor's bank accounts with said bank to the indebtedness owing by Debtor to said bank represented by promissory notes of the Debtor aggregating approximately \$750,000 in principal amount, which are secured by a trust deed on buildings and a part of the land constituting Debtor's manufacturing plant in Pomona, California. Debtor has consequently been compelled drastically to curtail its operations and intends to stop all manufacturing operations not later than Friday, August 22, 1947, and Debtor does not propose to incur any additional indebtedness without the approval of the Court in this proceeding, except indebtedness necessary to the preservation of Debtor's properties. However, Debtor has been negotiating with prospective purchasers of Debtor's business and assets and is hopeful that during the pendency of these proceedings Debtor's Plan of Arrangement submitted herewith may be consummated.

Wherefore, Debtor prays that proceedings may be had on this petition in accordance with the provisions of Chapter XI of the Bankruptcy Act and without limitation of such general power:

1. That the Court accept this petition for the purpose of subjecting the Debtor, its property and its creditors to the [5] jurisdiction of this Court;

2. That during the pendency of these proceedings all creditors and other persons be enjoined from instituting or prosecuting, or continuing the prose-

cution of any actions, suits, or proceedings, at law or in equity, against Debtor, and from levying any attachments, executions or other writs or processes upon or against Debtor or any of its assets or properties, or from taking or attempting to take into their possession any of the assets or properties of Debtor;

3. That during the pendency of these proceedings Debtor be authorized to remain in possession of its properties, and to do all things necessary to carry out the provisions of the Plan of Arrangement if confirmed, subject, however, at all times to the regulation and control of this Court;

4. That notice be given to creditors fixing a date for the meeting of creditors;

5. That this petition be accepted by the Court as Debtor's application for the confirmation of the arrangement proposed by the Plan of Arrangement, and that the hearing upon said application for confirmation and of any objections thereto be set at such time as may appear appropriate to the Court;

6. That Debtor be ordered to print and mail to the persons entitled thereto under Chapter XI of the Bankruptcy Act a copy of the notice of meeting of creditors, said notice to be in a form approved by this Court and annexed to a copy of said order, and to be accompanied by a copy of the Plan of Arrangement and a summary of the Debtor's assets and liabilities as shown by the schedules annexed to this petition as the same may be hereafter supplemented;

7. That Debtor shall have such other and further relief [6] as shall be necessary and proper in the premises.

Dated: August 20, 1947.

SALSBURY MOTORS, INC.

By /s/ E. F. SALSBURY,

Vice-President

O'MELVENY & MYERS

And

/s/ GRAHAM L. STERLING, JR.

Attorneys for Petitioner.

(Duly Verified.)

[Endorsed]: Filed Aug. 20, 1947. [7]

[Title of District Court and Cause.]

APPROVAL OF DEBTOR'S PETITION AND
ORDER OF REFERENCE UNDER SEC-
TION 322 OF THE BANKRUPTCY ACT.

At Los Angeles, in said District, on August 20, 1947, before the said Court the petition of Salsbury Motors, Inc., a corporation, that he desires to obtain relief under Section 322 of the Bankruptcy Act, and within the true intent and meaning of all the Acts of Congress relating to bankruptcy, having been heard and duly considered, the said petition is hereby approved accordingly.

It is thereupon ordered that said matter be referred to Hugh L. Dickson, Esq., one of the referees in bankruptcy of this Court, to take such further

proceedings therein as are required by said Acts; and that the said Salsbury Motors, Inc., a corporation shall attend before said referee on August 27, 1947, and at such times as said referee shall designate, at his office in Los Angeles, California, and shall submit to such orders as may be made by said referee or by this Court relating to said matter.

Witness, the Honorable Leon R. Yankwich, Judge of said Court, and the seal thereof, at Los Angeles, in said District, on August 20, 1947.

EDMUND L. SMITH,
Clerk

(Seal) By /s/ F. BETZ,
Deputy Clerk

[Endorsed]: Filed Aug. 20, 1947. [9]

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

To the Honorable the Judges of the United States District Court, in and for the Southern District of California, Central Division:

I, Hugh L. Dickson, Referee in Bankruptcy, to whom the above entitled proceedings were referred, do hereby certify:

1. The Petition of Salsbury Motors, Inc. under Chapter XI of the Bankruptcy Act was duly filed on August 20, 1947, and thereafter George T. Goggin was duly appointed and qualified as Receiver in said proceedings.

2. On September 8, 1947, Claimant, Bank of America National Trust and Savings Association, duly filed its Proof of Claim against the estate of the above named Debtor for the principal sum of \$601,482.80, plus interest in the sum of \$139.39, partially secured as therein set forth.

3. On November 20, 1947, George T. Goggin, Receiver, filed a Petition for an Order to Show Cause against said Claimant [10] with respect to the sum of \$34,073.50, which said Claimant had collected upon a promissory note executed by Jacques Power Saw Co. in favor of the Debtor herein. Order to Show Cause on said Petition came on for hearing on December 2, 1947, at which time said Claimant filed written Objections to the Jurisdiction of the Referee to entertain said Petition. For the sole purpose of determining jurisdiction certain facts were stipulated by counsel for the Claimant and Receiver and the matter submitted to your Referee. On December 8, 1947, your Referee filed a Memorandum Opinion indicating that the Objections of the Claimant to Jurisdiction should be overruled.

4. On December 19, 1947, George T. Goggin as Receiver filed Objections to Claim of Bank of America National Trust and Savings Association and Prayer for Affirmative Relief which Objections came on for hearing on January 12, 1948, at which time said Claimant duly filed an Answer to said Objections. At said time an Order was made and filed by your Referee overruling the Objections to the jurisdiction of your Referee to determine the

Petition of the Receiver for an Order to Show Cause Re: Jacques Power Saw Co. and pursuant to Stipulation of counsel for Receiver and said Claimant an Order was signed and filed herein consolidating the "Petition for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co." and the "Objections to Claim of the Bank of America National Trust & Savings Association, and Prayer for Affirmative Relief" for all purposes of hearing and decision. Thereupon a Stipulation signed by counsel for the Receiver and Claimant was duly filed in said proceedings stipulating certain facts for all purposes of hearing and decision of said consolidated proceedings and the cause was submitted to the Referee.

5. Thereafter on March 4, 1948, your Referee filed a [11] "Memorandum Opinion on Claim of Bank of America" and thereafter on March 22, 1948, your Referee signed and filed Findings of Fact, Conclusions of Law and an Order Allowing Claim of Bank of America National Trust and Savings Association.

6. On April 8, 1948, George T. Goggin, as Receiver, within the time allowed by your Referee duly filed a Petition to Review the said Order allowing Claim entered March 22, 1948.

7. The question presented by the Petition to Review is whether or not said Order Allowing Claim is a proper Order and as all of the facts were stipulated, your Referee considers that the sole question for determination is whether the legal conclusions

and Order are correctly drawn from the stipulated facts.

Your Referee is transmitting with this Certificate on Review the following:

1. Claim of Bank of America National Trust and Savings Association;

2. Petition of George T. Goggin for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co. filed November 20, 1947;

3. Order to Show Cause predicated on said Petition;

4. Objections of Bank of America to Jurisdiction of the Court in a summary proceeding against said Bank relating to a controversy concerning the lien and right of offset of the Bank on a promissory note and the proceeds received in payment thereof.

5. Reporter's Transcript on Hearing of said Objections to Jurisdiction on December 2, 1947;

6. Memorandum Opinion filed by your Referee December 8, 1947;

7. Objections to Claim of Bank of America National Trust and Savings Association and Prayer for Affirmative [12] Relief filed by George T. Goggin, Receiver, on April 19, 1947, and Notice of Hearing thereon;

8. Answer of Bank of America National Trust and Savings Association to Objections to Claim and Prayer for Affirmative Relief;

9. Order Overruling Objections to Jurisdiction and Consolidating Proceedings signed and filed January 12, 1948;

10. Stipulation and supplement thereto between George T. Goggin, as Receiver, and Bank of America National Trust and Savings Association, through their respective counsel, dated January 12, 1948, constituting all of the evidence submitted in said consolidated proceeding.

11. Memorandum Opinion on Claim of Bank of America dated March 4, 1948;

12. Findings of Fact, Conclusions of Law and Order Allowing Claim of Bank of America signed and filed March 22, 1948;

13. Petition for Review of Referee's Order of March 22, 1948, allowing Claim of Bank of America.

Dated: April 13, 1948.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: Filed April 15, 1948. [13]

[Title of District Court and Cause.]

IN PROCEEDINGS UNDER CHAPTER XI,
SECTION 322, OF THE BANKRUPTCY
ACT, PROOF OF PARTIALLY SECURED
DEBT

At Los Angeles in the Southern District of California on September 8, 1947, came R. G. Hawley of the County of Los Angeles in said District, personally known to me and made oath and says:

That he is an officer, to wit, Assistant Cashier of Bank of America National Trust and Savings Association, a corporation, to wit, a national banking association, organized and existing under and by virtue of the laws of the United States and carrying on business in the City of Los Angeles, County of Los Angeles, and elsewhere in the State of California; that this proof of debt is made by deponent as agent of said association, duly authorized to make such proof, and that he has personal knowledge of the facts herein deposed.

That the said Salsbury Motors, Inc., a corporation, who on the 20th day of August, 1947, filed a petition under the provisions of Chapter XI, Section 322 of the Acts of Congress relating to bankruptcy, was on the date said petition was filed indebted to claimant in the principal sum of \$601,482.80, plus interest on \$159,300.00 of said amount at the rate of 4½% per annum from August 13, 1947, and is now indebted to claimant in the sum of \$509,267.18, plus interest on \$159,300.00 of said sum at 4½% per annum from August 13, 1947, and

plus interest on [14] \$349,967.18 of said sum of 3% per annum from August 20, 1947. That said indebtedness is represented by negotiable instruments, to wit, promissory notes, and that no judgment has been rendered thereon, and that the nature and cause of said indebtedness is as follows:

Promissory notes, made, executed and delivered to claimant by debtor in the total aggregate principal amount of \$780,000.00; that copies of said promissory notes are attached hereto, marked Exhibits "A" to "F," inclusive, and made a part hereof; that the promissory note marked Exhibit "A" bears interest at the rate of 4½% per annum; that the promissory notes marked Exhibits "B" to "F," inclusive, bear interest at the rate of 3% per annum; that at the time of the execution of the note marked Exhibit "A" and as security for same the debtor, as trustor, made, executed and delivered to Corporation of America, a California corporation, as trustee for claimant, as beneficiary, a deed of trust covering certain real property situated in the County of Los Angeles, a copy of which deed of trust is attached hereto and marked Exhibit "G," which deed of trust was on the 14th day of February, 1946, recorded in Book 22818, Page 139 of Records of the County Recorder of Los Angeles County. It is expressly provided under the terms of said deed of trust that it shall be security for any and all other indebtedness and obligations of trustor to beneficiary whether present or future; that claimant is informed and believes and on such information and belief states that the value

of the real property and improvements located thereon covered by said deed of trust is in the amount of \$300,000.00. Claimant does not waive any of its right in and to said security in the event that the value of said security exceeds said sum of \$300,000.00.

That, in addition to the aforementioned security, [15] claimant had in its possession on the date of the filing of the petition herein certain notes, drafts and bills of lading of debtor covering merchandise sold by debtor, which notes, drafts and merchandise on the date of the filing of the petition herein had a face value of \$175,519.48. Claimant holds said notes, drafts and bills of lading under its right of offset, counterclaims and bank's lien.

That, since the date of the filing of the petition herein, claimant has received as collections on said drafts the sum of \$92,215.62, which sum has been applied by claimant on the principal indebtedness owing by debtor to claimant and that the face value of the drafts, notes and merchandise now held by claimant is \$83,303.86. That the total estimated value of security now held by claimant amounts to \$383,303.86 and the estimated amount of the principal of the debt owing to claimant, which is unsecured at this time, is \$125,963.32.

That there are no offsets or counterclaims to said debt and claimant does not hold and has not, nor has any person by its order or to deponent's knowledge or belief for its use, hold any security or se-

curities for said indebtedness, except the security and offsets, counterclaims and banker's right of lien as hereinabove set forth.

That by filing this claim claimant does not waive any right to dispose of the collateral held by claimant to secure said indebtedness according to the terms of any agreement pursuant to which such security was delivered to claimant and pursuant to claimant's right of offset, counterclaim and banker's lien, and this claim is filed only as an alternative to the security held and it is this claimant's intention to dispose of this collateral and to file an amended claim for any indebtedness which may exist after the application of moneys received after [16] the disposition of said collateral.

/s/ R. G. HAWLEY.

Subscribed and sworn to before me this 8th day of September, 1947.

[Seal] /s/ CLARA K. DEN,
Notary Public in and for the County of Los Angeles, State of California. [17]

EXHIBIT "A"

Corporation Installment Real Estate Note
(Principal Payable in Installments—Interest
Separately)

Los Angeles, Cal., February 13, 1946
\$180,000.00

For value received, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the

United States of America, to the order of the Bank of America, National Trust & Savings Association, at its Los Angeles Main Branch in this city the principal sum of One Hundred Eighty Thousand Dollars, with interest payable quarterly, beginning August 13, 1946, in like lawful money from date on deferred balances until paid at the rate of Four and One-Half per cent per annum; and said principal sum payable as follows: Three Thousand Six Hundred Dollars (\$3,600.00), on the 13th day of August, 1946, and Three Thousand Six Hundred Dollars (\$3,600.00) on the 13th day of November, 1946, and Four Thousand Five Hundred Dollars (\$4,500.00) on the 13th day of February, 1947, and Four Thousand Five Hundred Dollars (\$4,500.00) on the 13th day of each and every third month thereafter until the 13th day of February, 1956, on which said date the entire balance of principal and interest then unpaid shall become due and payable.

If the interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

A deed of trust dated February 13, 1946, secures the indebtedness evidenced by this note.

In Witness Whereof, the said Corporation has caused this note to be executed by its officers thereunto duly authorized and directed by a resolution

of its Board of Directors duly passed and adopted by a majority of said Board at a meeting thereof duly called, noticed, and held.

(Seal) SALSBUry MOTORS, INC.,
a Corporation,

By /s/ DON I. CARROLL,
President,

By /s/ M. W. LOWERY,
Secretary. [18]

Salsbury Motors, Inc.

Re- 8159

Date	Interest Paid		Paid on Account of Principal	
	Amount	Paid to	Amount	Balance
				180,000.00
12-19-46	535.50	12-13-46		
9-13-46	-----	-----	3,600.00	176,400.00
10-15-46	385.65	10- 1-46		
11-13-46	786.90	11-13-46	3,600.00	172,800.00
12-19-46	535.50	12-13-46		
1-20-47	535.50	1-13-47		
2-28-47	603.00	2-13-47	4,500.00	168,300.00
5-14-47	1,901.80	5-13-47	4,500.00	163,800.00
8-15-47	1,842.75	8-13-47	4,500.00	159,300.00

EXHIBIT "B"

UT 175930

Salsbury Motors

PROMISSORY NOTE

\$100,000.00

Los Angeles, California, February 13, 1947

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States of America to the order of Bank of America National Trust and Savings

Association at its Main Branch in this city the principal sum of one hundred thousand Dollars (\$100,000.00), with interest payable at maturity in like lawful money from the date hereon until paid at the rate of three per cent (3%) per annum, and said principal sum payable on May 14, 1947.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal.

This note evidences a loan made pursuant to a Loan Agreement between the payee and the undersigned dated February 18, 1946, and subsequent amendments thereto.

(Seal) SALSBUry MOTORS, INC.,
By /s/ GAGE H. IRVING,
Vice President and General
Manager,
By /s/ G. R. CASE,
Secretary and Treasurer. [20]

EXHIBIT "C"

UT 169355

Salsbury Motors, Inc.

\$100,000.00

Los Angeles, California, June 27, 1946

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand dollars) with

interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947.

\$30,000.00 on or before September 30, 1948.

\$30,000.00 on or before September 30, 1949, and

\$20,000.00 on or before September 30, 1950.

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

(Seal) SALSBUURY MOTORS, INC.,

By /s/ DON I. CARROLL,

President,

By /s/ M. W. LOWERY,

Secretary. [21]

EXHIBIT "D"

UT 170049

Salsbury Motors, Inc.

\$100,000.00

Los Angeles, California, July 16, 1946

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947,

\$30,000.00 on or before September 30, 1948,

\$30,000.00 on or before September 30, 1949, and

\$20,000.00 on or before September 30, 1950.

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan

agreement between the payee and the undersigned dated Feb. 18, 1946.

(Seal) SALSBUry MOTORS, INC.,

By /s/ DON I. CARROLL,
President,

By /s/ M. W. LOWERY,
Secretary. [22]

EXHIBIT "E"

UT 170518

Salsbury Motors

\$100,000.00

Los Angeles, California, August 1, 1946

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$100,000.00 (one hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$20,000.00 on or before September 30, 1947,
\$30,000.00 on or before September 30, 1948,
\$30,000.00 on or before September 30, 1949, and
\$20,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

(Seal) SALSBUry MOTORS, INC.,
By /s/ DON I. CARROLL,
President,
By /s/ M. W. LOWERY,
Secretary. [23]

EXHIBIT "F"

UT 170818

Salsbury Motors, Inc.

\$200,000.00

Los Angeles, California, August 15, 1946

For Value Received, the undersigned, Salsbury Motors, Inc., a corporation, promises to pay in lawful money of the United States, to the order of Bank of America National Trust and Savings Association at its Main Branch in this city the principal sum of \$200,000.00 (two hundred thousand dollars) with interest payable quarterly in like lawful money from the date hereof on deferred balances until paid at

the rate of three per cent (3%) per annum, said principal sum payable as follows:

\$40,000.00 on or before September 30, 1947,
\$60,000.00 on or before September 30, 1948,
\$60,000.00 on or before September 30, 1949, and
\$40,000.00 on or before September 30, 1950,

On which date the entire balance of principal and interest then unpaid shall become due and payable.

If interest be not so paid, it shall become part of the principal and thereafter bear like interest as the principal. If default be made in the payment when due of any part or installment of principal or interest, then the whole sum of principal and interest shall become immediately due and payable at the option of the holder of this note.

This note evidences a loan made pursuant to a loan agreement between the payee and the undersigned dated February 18, 1946.

(Seal) SALSBUry MOTORS, INC.,

By /s/ DON I. CARROLL,
President,

By /s/ M. W. LOWERY,
Secretary. [24]

EXHIBIT "G"

This Deed of Trust, made this 13th day of February, 1946, between Salsbury Motors, Inc., a corporation, as Trustor, ("Trustor" to be interpreted as "Trustors" where context requires), Corporation of America, a California corporation, as Trustee,

and Bank of America National Trust and Savings Association, a national banking association, as beneficiary,

Witnesseth: That Trustor Irrevocably Grants, Transfers and Assigns to Trustee, in Trust, With Power of Sale, the following described property situate in the County of Los Angeles, State of California, to-wit:

The Southwest quarter of Block 208 of Pomona Tract, in the City of Pomona, as per map recorded in Book 3, Page 95 of Miscellaneous Records, in the office of the County Recorder of said County; areas computed to centers of adjoining streets.

Except therefrom such portion as may have been heretofore conveyed to the Southern Pacific Railroad Company.

including all appurtenances and easements used in connection therewith, all water and water rights (whether riparian, appropriative, or otherwise, and whether or not appurtenant) used in connection therewith, all shares of stock evidencing the same, pumping stations, engines, machinery, pipes and ditches, including also all gas, electric, cooking, heating, cooling, air conditioning, refrigeration and plumbing fixtures and equipment which have been or may hereafter be attached in any manner to any building now or hereafter on the said property, or to the said property, and also the rents, issues and profits thereof, Subject, However, to the right, power and authority hereinafter given to and conferred

upon the Beneficiary to collect and apply such rents, issues and profits.

For the Purpose of Securing: (1) Payment of the sum of \$180,000.00 with interest thereon according to the terms of a promissory note or notes of even date herewith, made by Trustor, payable to the order of the Beneficiary, and extensions or renewals thereof; (2) payment of such additional amounts as may be hereafter loaned by Beneficiary or its successor to the Trustor or any of them, or any successor in interest of the Trustor, with interest thereon, and any other indebtedness or obligation of the Trustor, or any of them, and any present or future demands of any kind or nature which the Beneficiary or its successor may have against the Trustor, or any of them, whether created directly, or acquired by assignment, whether absolute or contingent, whether due or not, whether otherwise secured or not, or whether existing at the time of the execution of this instrument, or arising thereafter; (3) performance of each agreement of Trustor herein contained; and (4) payment of all sums to be made by Trustor pursuant to the terms hereof.

To Protect the Property and Security Granted by This Deed of Trust, Trustor Agrees:

(a) Properly to care for and keep said property and the buildings and improvements situate thereon in good condition and repair; to underpin and support, when necessary, any building or other improvement situate thereon, and otherwise to protect and preserve same; not to remove or demolish any build-

ing or improvement situate thereon; to complete or restore promptly, and in good and workmanlike manner, any building or improvement which may be constructed, damaged or destroyed thereon, and pay in full all costs incurred therefor; not to commit or permit waste of the property; to comply with all laws, covenants, conditions or restrictions affecting the property; to provide and maintain fire (and if required by Beneficiary, earthquake and other) insurance satisfactory to and with loss payable solely to Beneficiary, and to deliver all policies to Beneficiary, which delivery shall constitute assignment to Beneficiary of all return premiums; to appear in and defend, without cost to Beneficiary or Trustee, any action or proceeding purporting to affect the security hereunder, or the rights or powers of Beneficiary or Trustee, and, when required by Trustee or Beneficiary, to commence and maintain any action or proceeding necessary to protect such security and such rights or powers; and should Trustee or Beneficiary elect to appear in, defend, or commence and maintain any such action or proceeding, to pay all their costs and expenses, including attorney fees; to pay before delinquency, all taxes, assessments and charges affecting the property, including assessments on appurtenant water stock; to pay when due all encumbrances, charges and liens which appear to be prior or superior hereto; to pay all costs, fees and expenses of this trust; if said property be agricultural, to form said land in an approved and husbandmanlike manner, and to keep all trees, vines and crops on said land properly cultivated, irrigated,

fertilized, sprayed and fumigated; to replace all dead or unproductive vines or trees with new ones, and to keep all buildings, fences, ditches, canals, wells and other farming improvements on said premises in first-class condition, order and repair.

(b) Should Trustor fail to make any payment or do any act as herein provided, then Beneficiary or Trustee (but without obligation so to do, and without notice to or demand upon Trustor, and without releasing Trustor from any obligation hereunder) may make or do the same, and may pay, purchase, contest or compromise any encumbrance, charge or lien, which in the judgment of either appears to be prior or superior hereto; and in exercising any such powers, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Beneficiary or Trustee shall be without demand immediately due and payable by Trustor, and shall bear interest at the rate of ten per cent per annum, and be secured hereby.

It is Mutually Agreed That:

1. Should the property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake, or in any other manner, Beneficiary shall be entitled, at its option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage, and to obtain all compensation, awards or other relief

therefor. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of insurance affecting said property, are hereby assigned to Beneficiary, who may release any money so received by it, or apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages and rights of action and proceeds, as Beneficiary or Trustee may require. The Trustee or Beneficiary may enter upon the property at any time during the existence of this trust for the purpose of inspection, or for the accomplishment of any of the purposes hereof.

2. By accepting payment of any sum hereby secured after its due date, or after filing of notice of default and of election to sell, Beneficiary shall not waive its rights to require prompt payment when due of all other sums so secured, or to declare default for failure so to pay, or to proceed with the sale under any such notice of default and of election to sell, for any unpaid balance of said indebtedness. If Beneficiary holds any additional security for any obligation secured hereby, it may enforce the sale thereof at its option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owing by it to Trustor, the whole or any part of the indebtedness secured hereby.

3. Without affecting the liability of any person, including Trustor, for the payment of any indebtedness secured hereby, or the lien of this deed of trust

on the remainder of the property for the full amount of any indebtedness unpaid, Beneficiary and Trustee are respectively empowered as follows: Beneficiary may from time to time and without notice (a) release any person liable for the payment of any of the indebtedness, (b) extend the time or otherwise alter the terms of payment of any of the indebtedness, (c) accept additional security therefor of any kind, including deeds of trust or mortgages, (d) alter, substitute or release any property securing the indebtedness; Trustee may, at any time, and from time to time, upon the written request of Beneficiary (a) consent to the making of any map or plat of the property, (b) join in granting any easement or creating any restriction thereon, (c) join in any subordination or other agreement affecting this deed of trust or the lien or charge thereof, (d) reconvey, without any warranty, all or any part of the property.

4. Upon payment in full of all sums secured hereby, and performance of all obligations of the Trustor hereunder, the Trustee shall reconvey, without warranty, the estate vested in it hereby. The grantee in any reconveyance made pursuant to this deed of trust may be described as "the person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Upon default by Trustor in the payment of any indebtedness secured hereby, or in the performance of any agreement hereunder, or upon conveyance by Trustor of said property, or upon the divestment in any manner of his title

thereto, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default, Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of its election to cause to be sold the property herein described, to satisfy the obligations secured hereby, and shall cause such notice to be recorded in the office of the Recorder of each county wherein said property, or some part thereof, is situated. Beneficiary may rescind any such notice before Trustee's sale by executing a notice of rescission and recording the same. The recordation of such notice shall constitute also a cancellation of any prior declaration of default and demand for sale, and of any acceleration of maturity of indebtedness affected by any prior declaration or notice of default. The exercise by Beneficiary of the right of rescission shall not constitute a waiver of any default then existing or subsequently occurring, nor impair the right of the Beneficiary to execute other declarations of default and demand for sale, or notices of default and of election to cause the property to be sold, nor otherwise affect the note or deed of trust, or any of the rights, obligations or remedies of the Beneficiary or Trustee hereunder.

5. At least three months having elapsed between the recordation of the notice of default and the date of sale, Trustee, having first given notice of sale as then required by law, and without demand on Trustor, shall sell the property at the time and place of sale fixed by it in the notice of sale, either as a whole or

in separate parcels, and in such order as the Trustee may determine, at public auction to the highest bidder for cash, in lawful money of the United States of America, payable at the time of sale. Trustee may postpone sale of all or any portion of the property by public announcement at the time of sale, and from time to time thereafter may postpone the sale by public announcement at the time fixed by the previous postponement, and without further notice it may make such sale at the time to which the same shall be so postponed. Trustee shall deliver to the purchaser its deed conveying the property so sold, but without any covenant or warranty, expressed or implied. The recital in any such deed of any matters or facts, stated either specifically or in general terms, or as conclusions of law or fact, shall be conclusive proof of the truthfulness thereof. Any person, including Trustor, Trustee or Beneficiary, may purchase at the sale. After deducting all costs, fees and expenses of Trustee and of this trust, including costs of evidence of title in connection with the sale, the Trustee shall apply the proceeds of the sale to the payment of all sums then secured hereby, in such order and manner as may be required by the Beneficiary; the remainder, if any, to be paid to the person or persons legally entitled thereto. If Beneficiary shall elect to bring suit to foreclose this deed of trust in the manner and subject to the provisions, rights and remedies relating to the foreclosure of a mortgage, Beneficiary shall be entitled to a reasonable sum to be fixed by the court as attorney fees expended in the prosecution of said action.

6. As additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these trusts, to collect the rents, issues and profits of said property, or of any personal property [26] located thereon, with or without taking possession of the property affected hereby, reserving unto the Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby, or in the performance of any agreement hereunder, to collect and retain such rents, issues and profits as they accrue and become payable. Upon any such default Beneficiary may at any time, without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, and in its own name sue for or otherwise collect such rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine; also perform such acts of repair, cultivation, irrigation or protection, as may be necessary or proper to conserve the value of the property; also lease the same or any part thereof for such rental, term, and upon such conditions as its judgment may dictate; also prepare for harvest, harvest, remove, and sell any crops that may be growing upon the premises, and apply the proceeds thereof upon the indebtedness secured hereby. The entering upon and taking pos-

session of said property, the collection of such rents, issues and profits, and the application thereof as aforesaid, shall not waive or cure any default or notice of default hereunder, or invalidate any act done pursuant to such notice. Trustor also assigns to Trustee, as further security for the performance of the obligations secured hereby, all prepaid rents and all moneys which may have been or may hereafter be deposited with said Trustor by any lessee of the premises herein described, to secure the payment of any rent, and upon default in the performance of any of the provisions hereof, Trustor agrees to deliver such rents and deposits to the Trustee.

7. Any Trustor who is a married woman hereby expressly agrees that recourse may be had against her separate property for any deficiency after the sale of the property hereunder.

8. Should proceedings be instituted to register title of the property under any land title law, Trustor will pay upon demand all sums expended by Trustee or Beneficiary, including attorney fees, and forthwith deliver to Beneficiary all evidence of title.

9. The pleading of any statute of limitations as a defense to any and all obligations secured by this deed of trust is hereby waived to the full extent permissible by law.

10. Trustor further agrees that Beneficiary may from time to time and for periods not exceeding one year, in behalf of the Trustor, renew or extend any

promissory note secured hereby, and said renewal or extension shall be conclusively deemed to have been made when endorsed on said promissory note or notes by the Beneficiary in behalf of the Trustor.

11. Beneficiary may, from time to time, substitute another Trustee in the place of the Trustee herein named, to execute this trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all the title, powers and duties conferred upon the Trustee herein named. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this deed of trust sufficient to identify it, which, when recorded in the office of the County Recorder of the county or counties in which the property is situated, shall be conclusive proof of the proper appointment of the successor trustee.

12. This deed of trust shall inure to and bind the heirs, devisees, legal representatives, successors and assigns of the parties hereto. All obligations of each Trustor hereunder are joint and several. The rights or remedies granted hereunder, or by law, shall not be exclusive, but shall be concurrent and cumulative.

If a mailing address is set forth opposite any Trustor's signature hereto, and not otherwise, the undersigned Trustor shall be deemed to have requested that a copy of any notice of default, and of

any notice of sale hereunder, be mailed to said Trustor at said address.

Signature of Trustor

(Seal) SALSURY MOTORS, INC.,

a corporation,

By /s/ DON I. CARROLL,

President,

By /s/ M. W. LOWERY,

Secretary.

Mailing Address for Notices: 4464 District Blvd.,
Los Angeles 11, Calif.

State of California,
County of Los Angeles—ss.

On this 13th day of February, 1946, before me Gladys A. Hultmand, a Notary Public in and for said Los Angeles County, personally appeared Don I. Carroll known to me to be the President, and M. W. Lowery, known to me to be the Secretary of the Salsbury Motors, Inc., the Corporation that executed the within instrument, and also known to me to be the persons who executed the within instrument, on behalf of the Corporation herein named, and acknowledged to me that such Corporation executed the same.

Witness my hand and official seal.

(Seal) /s/ GLADYS A. HULTMAN,

Notary Public in and for said
Los Angeles County and State.

[Endorsed]: Filed Sept. 9, 1947. [27]

[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE
AGAINST BANK OF AMERICA

RE: JACQUES POWER SAW CO.

To the Honorable Hugh L. Dickson, Referee in
Bankruptcy:

Comes now your petitioner George T. Goggin, and
respectfully represents:

I.

That he is the duly appointed, qualified and acting
Receiver in the within Chapter XI Proceedings.

II.

That on or about July 8, 1947, the debtor herein
deposited with the Bank of America, National Trust
& Savings Association, collection department, a
promissory note, on which Jacques Power Saw Co.
of Denison, Texas, was the payor and the debtor
herein was the payee; the note was due and payable
on July 16, 1947, in the principal amount of \$35,-
837.00, with an allowable off-set as against said note
in the sum of \$1,163.50, arising from a credit memo
issued by the debtor herein, No 62295, leaving a prin-
cipal balance owing on said note in the sum of
\$34,673.50. [30]

III.

That said note was returned to the Bank of Amer-
ica, National Trust & Savings Association, Collec-

tion Department, on August 1, 1947, as unpaid, and the debtor herein was so notified by the aforesaid bank.

IV.

Thereafter, negotiations were entered into between the debtor in the within proceedings, and the payor under said note, to-wit: Jacques Power Saw Co., of Denison, Texas, and on August 21, 1947, written confirmation of prior oral revocation of any authority to collect upon said note was given to the Bank of America, and receipt thereof was acknowledged by said Bank of America, in writing, on August 21, 1947; that on or about August 27, 1947, the payor under said note, Jacques Power Saw Co., paid to the within estate the sum of \$34,673.50, forwarding same through the Bank of America, National Trust & Savings Association; that said monies are monies belonging to your petitioner herein on behalf of the within estate, and in spite of demands made therefor, the aforesaid Bank of America has refused to turn over the said sum of \$34,673.50; that the within proceedings commenced on August 20, 1947, and the aforesaid \$34,673.50 constitutes an asset to be marshalled by your petitioner, as Receiver, in the administration of the within estate.

Wherefore, your petitioner prays that this Court issue an order directing the aforesaid Bank of America, National Trust & Savings Association to appear and show cause, if any, why this Court should not make an order forthwith directing said bank to pay

to your petitioner, as Receiver herein, the sum of \$34,673.50.

/s/ GEORGE T. GOGGIN,
Receiver, Petitioner.

GENDEL & CHICHESTER.

By /s/ MARTIN GENDEL,
Of Counsel for Receiver.

(Duly Verified.)

[Endorsed]: Filed Nov. 20, 1947. [31]

[Title of District Court and Cause.]

ORDER TO SHOW CAUSE RE. BANK OF
AMERICA NATIONAL TRUST &
SAVINGS ASSOCIATION

Upon Reading and Filing the verified petition of George T. Goggin, as Receiver, and upon motion of Martin Gendel, one of his counsel, and good cause appearing therefrom,

It Is Hereby Ordered that the Bank of America, National Trust & Savings Association, appear before Hugh L. Dickson, Referee, in his courtroom located on the 3rd floor of the Federal Building, Los Angeles, on the 2nd day of December, 1947, at 10 o'clock a.m., or as soon thereafter as counsel can be heard, then and there to show cause why the prayer of the petition, a copy of which accompanies the within Order to Show Cause, should not be granted, and why the said sum of \$34,673.50 should not forthwith be paid to the said Receiver.

The within Order to Show Cause, and copy of the petition, may be served, by properly mailing a copy thereof to the offices of Hugo Steinmyer, attorney of record for the Bank of America, National Trust & Savings Association, at least five days before the date of the above hearing.

Dated this 20th day of November, 1947.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: Filed Nov. 20, 1947. [33]

[Title of District Court and Cause.]

Objections of Bank of America National Trust and Savings Association to Jurisdiction of the Court in a Summary Proceeding Against Said Bank Relating to a Controversy Concerning the Lien and Right of Offset of the Bank on a Promissory Note and the Proceeds Received in Payment Thereof.

Bank of America National Trust and Savings Association, a national banking association, the party mentioned in that certain order to show cause issued in the above-entitled proceeding by Hubert F. Laugharn, Referee, on November 20, 1947, hereby appears specially and objects to the jurisdiction of the Court and said Referee to hold and to hear such a summary proceeding on the ground that Bank of America National Trust and Savings Association had possession of, a lien on and the right of offset against all proceeds arising from the payment of, that certain

promissory note dated June 26, 1947, in the sum of \$35,837.00, payable to the order of the Debtor, and signed by Jacques Power Saw Co.

That the Receiver's petition for order to show cause sets forth facts clearly alleging that Bank of America National Trust and Savings Association on August 20, 1947, the date of the filing of the Debtor's petition in the above proceeding, and at all times since August 1, 1947, has had possession of said promissory note or the proceeds resulting from the payment of [34] the said promissory note.

Dated at Los Angeles, California, this 25th day of November, 1947.

BANK OF AMERICA NATIONAL TRUST AND
SAVINGS ASSOCIATION,

By /s/ (Illegible.)

Vice President.

POINTS AND AUTHORITIES

The situation in this case is that the Receiver in Bankruptcy does not have and never has had constructive or actual possession of the promissory note executed by Jacques Power Saw Co. Possession of said promissory note or of the proceeds received from the payment of said note has been in Bank of America National Trust and Savings Association at all times since prior to the filing of the petition in bankruptcy herein.

Volume 2, Collier on Bankruptcy (14th Ed.) paragraphs 23.04, page 449:

"Generally speaking, where the controversy is one

concerning property in the actual or constructive possession of the bankruptcy court, that court may adjudicate summarily all rights and claims pertaining thereto. Where the controversy is one involving property in the actual or constructive possession of a third person asserting a bona fide adverse claim, the bankruptcy court has no jurisdiction to determine summarily that person's claim upon petition by the receiver or trustee, unless by that person's consent. Without the consent of the adverse claimant, a plenary suit must be brought in the court of appropriate jurisdiction, and this will in turn be governed by Section 23 of the Act. These general principles regarding the summary jurisdiction of the bankruptcy court have been affirmed and reaffirmed in a chain of decisions beginning with *White v. Schloerb* and extending down to the present date."

Volume 2, *Collier on Bankruptcy*, (14th Ed.), paragraph 23.06, page 480:

"If the property is in the possession of the claimant, his claim is adverse, whether he claims to hold an absolute title to such property, or only asserts a lien upon it. For example, an alleged lien [35] by a bank against a sum on deposit with it may be an adverse claim, and so where a trust company has certain funds of a bankrupt corporation which are held under a trust agreement giving the company a lien for its services in retiring stock of the bankrupt, the rights of the trust company may not be determined in a summary proceeding. Likewise, a mortgagee, a consignor or conditional vendor, a surety, a

finance company under a trust receipt, or a pledgee, in possession prior to bankruptcy, have all been held to be adverse claimants subject only to a plenary suit to determine their interest.”

Bardes v. First National Bank of Hawarden,
178 U. S. 524.

Sec. 23 of the Federal Bankruptcy Act.

Volume 2, *Collier on Bankruptcy* (14th Ed), paragraph 23.06, page 481:

“Likewise a mortgagee, a consignor, or conditional vendor, a surety, a finance company under a trust receipt, or a pledgee, in possession prior to bankruptcy, have all been held to be adverse claimants subject only to a plenary suit to determine their interests.”

Volume 2, *Collier on Bankruptcy* (14th Ed.), paragraph 23.07, page 500:

“The fact that in an independent plenary action the claim may be found to be fraudulent or preferential does not make it any the less adverse, for that possibility does not make the claim merely colorable.”

HUGO A. STEINMEYER

and

JOHN E. WALTER,

By /s/ JOHN E. WALTER,

Attorneys for Bank of America National Trust and
Savings Association.

[Endorsed]: Filed Dec. 2, 1947. [36]

[Title of District Court and Cause.]

MEMORANDUM OPINION

On November 20, 1947, George T. Goggin, acting Receiver in the above named Chapter XI proceeding, filed a petition for order to show cause against the Bank of America concerning the collection by the Bank of America of the sum of \$34,673.50; the order being to show cause why this Court should not make an order directing the Bank of America to pay to George T. Goggin, the Receiver, the said sum of \$34,673.50.

The facts in this case are as follows:

On August 20, 1947, the Salsbury Motors, Inc., a corporation, filed a proceeding under Chapter XI in this Court, and on September 10, 1947, George T. Goggin was appointed Receiver. On August 19, 1947, the Bank of America received word from the Debtor that it intended to file Chapter XI proceedings, and immediately on the afternoon of August 19, 1947, the Bank of America shut off all credits or allowances to the Debtor to draw on any of its funds in the Bank of America.

On July 8, 1947, the Debtor deposited with the Bank of America for collection, a note payable by the Jacques Power Saw Co. of Denison, Texas, the proceeds of which, when obtained, would be deposited in their regular commercial account. This note was due and payable on July 16, 1947, in the face amount of \$35,837.00, but negotiations between the maker of the note and the Debtor resulted in a credit

memorandum of \$1,163.50, which left the amount due on the note, as above stated, \$34,673.50.

It is stipulated by the parties herein in a written stipulation that the Bank of America had not extended to the Debtor [37] any credit upon the faith of said note of the Jacques Power Co., and that the proceeds of the note, when collected, were to be deposited to the credit of the Debtor.

On August 21, 1947, there was delivered to the Bank of America, a notice in the following words and figures, to-wit:

“August 21, 1947

“Bank of America National
Trust and Savings Association,
Pomona, California

Attention: Mr. Farrend:

Gentlemen:

On July 8, 1947, we deposited with you for collection a promissory note on which Jacques Power Saw Company, of Denison, Texas, was the payor and Salsbury Motors, Inc., was the payee. The note was due July 16, 1947, and was in the principal amount of \$35,837.00.

Please be advised that your authority to collect said note is hereby terminated, effective immediately. Collection will be effected by direct dealings between ourselves and Jacques Power Saw Company.

Very truly yours,

SALSBURY MOTORS, INC.,
C. R. CASE,
General Manager.”

But not withstanding the notice advising the Bank that its authority to collect on the Jacques Power Saw Co. note had been terminated, the Bank of America on or about August 25 or 26, collected from said Jacques Power Saw Co. the sum of \$34,673.50, which it claims it has the right to retain and apply on the indebtedness owed to the Bank by the Debtor. The foregoing order to show cause was filed to compel the Bank of America to forward this amount of money to the Receiver.

The stipulation above referred to was entered into by the parties herein to permit the Referee to determine whether there is a color of title in the Bank on its objection to the jurisdiction of the Court to determine this order to show cause. [38]

In the first place, under Section 70 of the Bankruptcy Act, it is provided as follows: "Upon the confirmation of an arrangement or plan * * * or upon the order confirming the arrangement or plan, the title to the property dealt with is revested in the Bankrupt or Debtor." Under the terms of this section, undoubtedly the title of the Debtor to all its property is passed to the Receiver or a Trustee who might thereafter be elected.

Further, under the terms of the notice revoking the authority of the Bank of America to collect this particular note in question, I do not believe that the Bank, not having advanced any credit on this note, had the right to disregard the notice of revocation of authority to collect said note or to assume that it had the right to collect funds of the Debtor after it had filed under Chapter XI.

Furthermore, the Bank of America filed herein a claim and deducted from the face of their claim the amount which they had collected on the Jacques Power Saw Co. of Dennison, Texas, to-wit, the sum of \$34,673.50.

Under the authority of Chase National Bank of City of New York v. Lyford, 147 Fed. Rep. 2d 273, it is held:

“In railroad reorganization proceeding, a bank which set off debtor’s account in bank against debtor’s indebtedness and filed a claim for the balance could not object to summary proceedings on ground that bank was an adverse claimant, since the claim of the bank disclosing application of balance and presenting the net amount remaining after such application presented to the court the issue of validity of bank’s conduct in applying the balance.”

Therefore, I hold that there is no color of title in the Bank to the proceeds of the note in question [39] ~~and that the Receiver is entitled to an order directing the Bank of America to pay him the sum of \$34,573.50 [H.L.D.]~~. Therefore, the objection of the Bank of America to the jurisdiction of this Court is overruled.

Let the Receiver draw appropriate findings of fact and conclusions of law.

Dated: December 8, 1947.

/s/ HUGH L. DICKSON,

Referee in Bankruptcy.

[Endorsed]: Filed Dec. 8, 1947. [40]

[Title of District Court and Cause.]

OBJECTIONS TO CLAIM OF THE BANK OF
AMERICA NATIONAL TRUST & SAVINGS
ASSOCIATION, AND PRAYER FOR AFFIR-
MATIVE RELIEF.

To the Honorable Hugh L. Dickson, Referee in
Bankruptcy:

Comes now George T. Goggin, and respectfully al-
leges as follows:

I.

That he is the duly appointed, qualified and acting
Receiver in the within Chapter XI proceedings,
which commenced on the 20th day of August, 1947.

II.

That heretofore and by proof of claim bearing
date on the face thereof of September 8, 1947, the
Bank of America National Trust & Savings Asso-
ciation, a National Banking Association, hereinafter
referred to as "Bank of America," filed a proof of
claim in the within debtor proceedings, entitled "In
Proceedings Under Chapter XI, Section 322, of the
Bankruptcy Act, Proof of Partially Secured Debt";
that a reading of said proof of debt reflects that the
claimant has a contingent claim in the sense that it
has arbitrarily credited security held by it, consist-
ing primarily of certain land and improvements
thereon, as having a value of \$300,000.00; that until
the true value of said security can be determined,
no unsecured general claim can be allowed to the

said claimant, in the sum of \$125,963.32, or any other sum.

That in addition to the security of the real property, the proof [41] of claim recites that the claimant had in its possession on the date of the filing of the reorganization petition herein, certain notes, drafts and bills of lading of the debtor covering merchandise sold by the debtor, which notes, drafts and bills of lading, reflecting said merchandise so sold, had an alleged face value, on the date of the filing of the petition, of \$175,519.48, and that claimant holds said notes, drafts and bills of lading under an alleged right of offset, counterclaim and bank's lien.

That the debtor herein was the owner entitled to the physical possession of all of the aforesaid notes, drafts, checks, bills of lading and merchandise on the date that the petition for reorganization was filed in the within proceedings on August 20, 1947.

III.

In further objecting to the claim of the Bank of America your receiver alleges that the bank is not entitled to offset any portion of said \$175,519.48, and that no claim can be allowed to the Bank of America until it has turned over to your receiver the said notes, drafts, bills of lading and merchandise, or the monies collected thereon in the sum of \$175,519.48.

Facts Substantiating Prayer for Affirmative Relief.

IV.

That your receiver is informed and believes, and therefore alleges, that on the 20th day of August, 1947, Bank of America had in its custody those cer-

tain drafts, notes and bills of lading reflected by the items contained in Exhibit "A," which Exhibit "A" is attached hereto and made a part hereof by reference as though set forth verbatim; that your receiver is informed and believes, and therefore alleges, that the total amount of money reflected by said notes, drafts and bills of lading is in the sum of \$178,950.93; that your receiver is further informed, and believes, and therefore alleges, that Bank of America has collected \$122,949.88 as against said sum of \$178,950.93 and there remains, according to the information and belief of your receiver, approximately \$56,001.05 of uncollected checks, drafts, notes or bills of lading representing merchandise having a reasonable value in that amount as [42] of the commencement of the within debtor proceedings, and further itemized in Exhibit "B" attached hereto and made a part hereof by reference as though set forth verbatim; that at all times the debtor herein, prior to the commencement of the within proceedings, and the receiver herein since August 20, 1947, have had the right of possession and ownership in and to the uncollected items and the merchandise represented thereby.

V.

That Bank of America at no time advanced any credit to the debtor in the within proceedings on the basis of the aforesaid notes, drafts and bills of lading, and at no time permitted the debtor to draw checks against, or monies from, any of the aforesaid notes, drafts and bills of lading; that pursuant to the established arrangement between the debtor and Bank of

America no credit was issuable to the debtor until the monies represented by the notes, drafts and bills of lading would have been collected, and, after collection by Bank of America, these monies would then have been deposited in the commercial account of the debtor; that the aforesaid notes, drafts, bills of lading, and the merchandise represented thereby, at no time were pledged, in any manner, as security for the payment of any claims or obligations otherwise owing from the debtor to Bank of America; that as of the date of the filing of the proceedings herein on the 20th day of August, 1947, Bank of America had custody of the notes, drafts and bills of lading solely as the agent of the debtor herein, for the sole purpose of collecting the monies represented thereby and paying the said monies to the debtor; that upon the appointment and qualification of the undersigned as receiver herein, the receiver was entitled to the payment of all monies represented by Exhibit "A" herein, and your receiver was entitled to the possession of all returned scooters and engines as set forth in Exhibit "B" herein; that at no time did the receiver, or the debtor herein, convey any title to Bank of America covering all or any of the notes, drafts, bills of lading, or returned merchandise in question as described in Exhibit "B"; that in spite of the demand made therefor, Bank of America has failed and refused to turn over to your receiver the proceeds of the collections made by Bank of America commencing as of August 20, 1947, and has likewise failed and refused to [43] turn over the scooters and engines as described in Exhibit "B"; that as of the

close of business on August 19, 1947, Bank of America refused to permit debtor, or the undersigned as successor thereto in the capacity of receiver, to draw any monies upon the various bank accounts of the debtor, and the said Bank of America did take into its possession, under an alleged claim of Banker's Lien, the undersigned is informed and believes and therefore alleges, the sum of approximately \$161,125.55.

VI.

That included in Exhibit "A" is an item of \$34,673.50 which Bank of America collected on a note from Jacques Power Saw Company after the commencement of the within reorganization proceedings, and after the bankrupt had received written notice from the debtor not to make said collection; that prior to the filing of the within objections to claims, and prayer for affirmative relief, the undersigned, as receiver, has caused to be brought against Bank of America an order to show cause why said \$34,673.50 should not be forthwith turned over to the undersigned, as receiver; that if the said hearing on the aforesaid order to show cause is not consolidated with the within objections and petition for affirmative relief, there will be a duplication of relief to the extent of the said sum of \$34,673.50.

VII.

That Bank of America at no time was or is entitled to any claim of offset, counterclaim or Bank's Lien, with reference to said sum of \$178,950.93; that since the said notes, drafts, bills of lading and returned merchandise have been wrongfully withheld

from the undersigned, as receiver, by Bank of America, said Bank of America is indebted to the undersigned as receiver of the within estate in the sum of \$178,950.93, the said amount representing assets of the within estate collected and withheld by Bank of America after the commencement of the within Chapter XI proceedings, and in the sole capacity of agent and employee of the debtor and the receiver herein, and without any color of title, or bona fide adverse claim thereto; that the undersigned, as receiver, pursuant to his obligations under law, alleges that the said Bank of America should be required to forthwith turn over the said sum of \$178,950.93 as an asset of the [44] within estate payable to the undersigned as receiver, in the course of his administration herein.

Wherefore, the undersigned, as receiver in the within debtor proceedings, prays as follows:

1. That his objections as receiver to the claims of the Bank of America in the sum of \$125,963.32, or in any other sum, be sustained until the matters set forth hereinabove have been determined by this Court.

2. That this Court make an affirmative order directing the Bank of America to forthwith turn over to the undersigned, as receiver herein, the sum of \$178,950.93.

Dated: December 18, 1947.

/s/ GEORGE T. GOGGIN,
Receiver, Petitioner.

/s/ MARTIN GENDEL,
Of Counsel for Receiver. [45]

EXHIBIT "A"

Salsbury Motors, Inc.

List of Drafts or Notes in Possession of Bank of
America National Trust and Savings Association,
Pomona Branch, as of August 20, 1947.

Drawee-Purchaser	Amount
Funderburke's Garage, Marianna, Florida.....	\$ 40.50
Roy Waterbury. Sitka. Alaska.....	1,059.28
E. I. Clarke. Ltd., Edmonton, Alberta, Canada.....	88.25
Jess York, San Angelo, Texas.....	573.90
Beecraft and Lund, West Palm Beach, Florida.....	1,206.40
Texas Tile & Marble Co., Amarillo, Texas.....	1,205.90
Collins Concrete Prod. Co., Inc., Hanover, Pa.....	1,017.00
Hi-lo Equipment Co., Omaha, Nebraska.....	6,356.25
Concord Office Supply Co., Penacook, New Hampshire....	3,016.00
Idaho Cyclery. Boise, Idaho.....	1,508.00
D & D Sales Co., Toledo, Ohio.....	9,216.80
Brush Cycle Co., Spokane, Washington.....	1,809.60
Wichita Supply & Mfg., Wichita 2, Kansas.....	2,118.75
Alton Automotive Sales & Service, Alton, Illinois.....	476.94
Miles L. Hallman, Emmaus, Pennsylvania.....	10,638.96
Johnston Motors, Helena, Montana.....	904.80
Tri-State Motor Scooter Dist., Evansville, Indiana.....	1,809.60
Jacques Power Saw Co., Denison, Texas.....	34,673.50
Leeser Motor Co., Topton, Pennsylvania.....	829.80
Schott Motorcycle Supply, Lewiston, Maine.....	3,026.33
Jess York, San Angelo, Texas.....	573.90
McDaniel's Serv. Station, Big Spring, Texas.....	593.55
Strong Motors Limited, Saskatoon, Saskatchewan, Can- ada	2,585.75
Beecraft & Lund, West Palm Beach, Florida.....	1,170.55
Ever-ready Auto Service, Midland, Texas.....	2,766.00
Fred Deeley, Vancouver, B. C., Canada.....	1,701.50
Tri-State Motor Scooter, Evansville, Indiana.....	1,247.81
Paszamount Distr. Co., New Brunswick, New Jersey.....	3,431.45
Ever-Ready Auto Service, Midland, Texas.....	243.32
Scooter Sales Corp., Norfolk, Virginia.....	229.50
Concord Office Supply Co., Penacook, New Hampshire....	3,016.00

Drawee-Purchaser	Amount
Hellgate Motors, Missoula, Montana.....	1,206.40
Motor Scooter Dist. Co., Omaha, Nebraska.....	904.80
W. W. Warsaw, Waterloo, Iowa.....	17,646.00
Dresden Tile Yard, Dresden, Ontario, Canada.....	990.00
Neil K. Hoak, Huron, Ohio.....	1,508.00
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Schrader Cycle & Marine Sales, Cobleskill, New York....	904.80
Boyd's Hobby Shop, Lubbeck, Texas.....	1,382.00
Beecraft & Lund, West Palm Beach, Florida.....	603.20
Paszamount Distr. Co., New Brunswick, New Jersey.....	4,222.40
Alton Auto Sales & Serv., Alton, Illinois.....	17,645.85
The Motorette Corp., Buffalo, New York.....	4,775.00
The Motorette Corp., Buffalo, New York.....	4,775.00
Neil K. Hoak, Huron, Ohio.....	1,508.00
Harley-Davidson Sales, Gadsden, Alabama.....	1,508.00
Alton Automotive Sales & Service, Alton, Illinois.....	17,645.85
Alton Automotive Sales & Service, Alton, Illinois.....	527.79
Fletcher Tire Co., Inglewood, California.....	1,458.75
Total	<hr/> \$178,950.93

EXHIBIT "B"

Date Shipped	Date of B/L	Date Dep. in Bank	Customer	No. of Scooters	Amount
8/13	8/13	8/14	W. W. Warsaw	30	\$ 8,823.00
8/13	8/13	8/14	W. W. Warsaw	30	8,823.00
7/24	7/24	7/25	Neil K. Hoak	5	1,508.00
8/11	8/11	8/12	Neil K. Hoak	5	1,508.00
7/14	7/14	7/15	Alton Automotive Sales & Serv.	60	17,645.85
7/31	7/31	8/1	Paszamant Dist. Co.	14	4,222.40
8/6	8/6	8/7	Beecroft & Lund	2	603.20
8/11	8/11	8/12	Beecroft & Lund	2	603.20
					<hr/>
					148
					<hr/>
S/D Invoices billed to customers; S/D held by Bank of America					
7/16	7/16	7/17	Harley-Davidson Sales	5	\$ 1,508.00
7/24	7/24	7/25	Helgate Motors	4	1,206.40
7/27	7/27	7/28	Motorette Corp. (50 engines)	...	4,775.00
7/28	7/28	7/29	Motorette Corp. (50 engines)	...	4,775.00
					<hr/>
					9
					<hr/>
					\$12,264.40
					<hr/>
					157
					<hr/>
					100
					<hr/>
					\$56,001.05

Scooters
Engines

[Endorsed] : Filed Dec. 22, 1947. (48]

(Duly Verified.)

[Title of District Court and Cause.]

Notice of Hearing on Objections to Claim of Bank
of America National Trust & Savings Association
and Prayer by Receiver for Affirmative
Relief

To the Bank of America National Trust & Savings
Association, and to Hugo Steinmeyer, Esq., Its
Attorney:

You and Each of You Will Please Take Notice,
that a hearing on the objections of George T. Gog-
gin, as Receiver, to the claim of the Bank of Amer-
ica National Trust & Savings Association and on
his prayer for affirmative relief, a copy of which ob-
jections and affirmative relief are attached to the
within notice, will be held before Hon. Referee
Hugh L. Dickson, in his courtroom located on the
3rd floor of the Federal Building, Los Angeles,
California, on the 12th day of January, 1948, at the
hour of 10 o'clock a.m., or as soon thereafter as
counsel can be heard.

Dated this 19th day of December, 1947.

GENDEL & CHICHESTER,

By /s/ MARTIN GENDEL,

Of Counsel for George T.

Goggin as Receiver.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Dec. 22, 1947. [50]

[Title of District Court and Cause.]

ANSWER OF BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION TO OBJECTIONS TO CLAIM AND PRAYER FOR AFFIRMATIVE RELIEF

Comes now claimant, Bank of America National Trust and Savings Association, and in answer to the Objections To Claim and Prayer for Affirmative Relief filed by George T. Goggin, Receiver herein, admits, denies and alleges as follows:

I.

That said Objections to Claim fail to state facts sufficient to constitute a basis for lawful objection to the allowance of the claim of claimant filed herein.

II.

The allegations of said Objections designated "Facts Substantiating Prayer for Affirmative Relief" fail to state facts sufficient to show any basis for affirmative relief in accordance with the prayer of said Objections.

III.

The above-entitled court has no jurisdiction to hear and [52] determine or make any order upon said prayer for affirmative relief for the reason that it affirmatively appears from the Receiver's Petition that claimant upon the filing of the Petition in the above-entitled proceedings was in actual possession of the notes, drafts and bills of lading referred to in the said Petition under a bona fide

claim of right thereto and the above-entitled court has no jurisdiction in a summary proceeding to make any order directing any disposition thereof.

IV.

Referring to the allegations of paragraph II of said Objections, claimant denies that it has or has filed a contingent claim in the above-entitled proceedings and on the contrary alleges that its claim is fixed and certain and for a liquidated amount, to wit, upon an indebtedness in the principal sum of \$601,482.80 as of the date of filing the Petition herein, with interest thereon as set forth in said claim. Claimant denies that the debtor on the date of filing the Petition in the above-entitled proceedings was entitled to the physical possession of the notes, drafts, checks, bills of lading and the merchandise referred to in said objections.

V.

Claimant denies the allegations of paragraph III of said Objections.

VI.

Claimant denies all of the allegations of paragraph IV of said Objections commencing with the words "that your receiver is further informed, and believes," on line 28, page 2 thereof, to the end of said paragraph IV, and in this connection claimant alleges as follows:

On August 20, 1947, claimant had in its possession drafts drawn upon drawee purchasers in the amounts set opposite their [53] respective names as described and set forth on pages 1 and 2 of

Exhibit "A" to the said Objections to Claim, and likewise had in its possession in each of said transactions order bills of lading representing the right to receive the merchandise described therein which was in course of shipment to the said drawee purchasers. Claimant collected all of said drafts and delivered the merchandise evidenced by the bills of lading to the drawee purchasers with the exception of the specific transactions hereinafter set forth:

(a) Subsequent to August 20, 1947, Hellgate Motors, Missoula, Montana, rejected payment of the draft for \$1,206.40 described in Exhibit "A"; claimant caused the said merchandise to be diverted to another purchaser who paid the said draft and accepted said merchandise, and claimant received a net amount of \$1,123.86 after deduction of additional freight charges;

(b) The Alton Auto Sales & Serv., Alton, Illinois, rejected payment of one draft for \$17,645.85 and claimant caused said merchandise to be diverted to another purchaser and received a net amount of \$16,995.95 after deducting additional freight charges thereon;

(c) Each of the following drawee purchasers rejected drafts drawn upon them, to wit:

Motor Scooter Dist. Co.,

Omaha, Nebraska	\$ 904.80
W. W. Warsaw,	

Waterloo, Iowa	17,646.00
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Neil K. Hoak,

Huron, Ohio	1,508.00
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Beecroft & Lund, West Palm Beach, Florida.....	603.20
Beecroft & Lund, West Palm Beach, Florida	603.20
Paszamount Distr. Co., New Brunswick, New Jersey.....	4,222.40
Neil K. Hoak, Huron, Ohio	1,508.00
Harley-Davidson Sales, Gadsden, Alabama	1,508.00
Alton Automotive Sales & Service, Alton, Illinois	17,645.85

Thereafter claimant caused the merchandise forwarded with said drafts consisting of 153 scooters to be returned to Pomona, California, and temporarily stored in the plant of the debtor under the terms of an agreement entered into between claimant, and George T. Goggin, Receiver in the above-entitled proceedings, confirmed and approved by the Honorable Hugh L. Dickson, Referee in the above-entitled proceedings, by which agreement it was agreed that said scooters would be held in the plant of the debtor for storage and safekeeping only and would be redelivered to claimant upon demand. Claimant incurred liability for and paid freight and demurrage charges of \$4,931.47 in returning the said scooters to Pomona. Thereafter claimant employed the debtor, through the Receiver herein, to perform work and services upon said scooters and paid to the Receiver the sum of \$1,461.86, repre-

senting the cost thereof. Thereafter on December 2, 1947, claimant sold the said 153 scooters for the sum of \$34,425, which was the reasonable value of said scooters at the time of sale and the best and only price obtainable therefor, which represented a net realization of \$28,031.67 upon said nine items for which drafts aggregating \$46,149.45 were in claimant's possession on August 20, 1947;

(d) The Motorette Corp., Buffalo, New York, rejected two drafts for \$4,775.00 each, each of which was accompanied by bills of lading entitling the holder to possession of 50 engines; that claimant caused the said engines to be stored in Buffalo, New York, pending a possible sale thereof and to date claimant has incurred and paid insurance and warehouse charges in the sum of \$82.01 thereon and has incurred liability for further storage charges, [55] the amount of which has not been ascertained.

VII.

Referring to the allegations in paragraph V of said Objections, claimant admits that it has refused to turn over to the Receiver the proceeds of collections in the possession of claimant on August 20, 1947, and has refused to deliver to the Receiver the 100 engines referred to in Exhibit "B" to said Objections, and denies each and all of the remaining allegations of said paragraph V, and in this connection claimant alleges as follows:

On or about February 18, 1946, claimant loaned to the debtor in the above-entitled proceeding the sum of \$180,000 secured by a trust deed upon the

real property upon which the plant of the debtor was located and under date of February 18, 1946, entered into an agreement with said debtor by the terms of which it agreed to extend credit to the debtor in the aggregate sum of \$500,000 to be repayable in annual installments on or before September 30, 1950. Thereafter on or about September 3, 1946, by an amendment to said agreement, claimant agreed to increase the amount of credit to be extended to the debtor by the additional sum of \$450,000 until September 30, 1947; that thereafter claimant did lend to said debtor the aggregate amount of \$600,000 pursuant to the terms of said credit agreement as amended. That continuously from the date of said agreement the said debtor in the usual course of business deposited with claimant for collection and credit to the debtor's commercial deposit account notes and drafts accompanied by shipping documents evidencing sales of merchandise by the debtor. From the date of said loan agreement debtor regularly maintained its deposit accounts with claimant as a bank of deposit. On August 19, 1947, there was on deposit in various deposit accounts of debtor with claimant the sum of [56] \$161,125.55, all of which had been deposited in the ordinary course of business, and on said day said deposit balances were offset against the indebtedness of debtor to claimant which was past due. On August 19 and on August 20, 1947, there was in the possession of claimant notes and drafts in the aggregate amount of \$178,950.93 accompanied by shipping documents, all of which

had been deposited with claimant in the ordinary course of business for collection and credit to the deposit accounts of the debtor. On August 20, 1947, and at all times subsequent thereto, claimant held possession of said collection items under its general banker's lien authorized and recognized by the laws of the State of California; upon each of said collection items the obligation of claimant to credit the deposit accounts of the debtor upon collection thereof and the general indebtedness of the debtor to claimant constituted mutual credits within the meaning of Section 68(a) of the Bankruptcy Act.

VIII.

Referring to the allegations of paragraph VI of said Objections, claimant admits that included in the last of items set forth in Exhibit "A" is a promissory note of \$34,673.50 and that a proceeding to recover the said sum is now pending in the above-entitled court and objects to a consideration in the present proceeding of any issue concerning the said note unless the said proceeding shall be consolidated with the above proceeding.

IX.

Claimant denies all the allegations of paragraph VII of said Objections.

As a Further and Separate Defense to the Said Objections to Claim and Prayer for Affirmative Relief, Claimant Alleges: [57]

I.

That said Objections are premature in that claimant as a secured creditor is entitled to convert the securities held as security for its claim into money according to the terms of the agreement pursuant to which such securities were delivered to creditor; that part of the security held by claimant is a trust deed upon real property of the debtor and sufficient time to cause the said real property to be sold pursuant to the terms of the deed of trust has not elapsed; that no plan of arrangement has as yet been submitted to unsecured creditors in the above-entitled proceedings and claimant believes that if such plan of arrangement is submitted the value of the real property held as security for the claim of claimant may be reached by agreement, arbitration or compromise; that claimant has used its best efforts to dispose of the remaining engines held by it under its banker's lien but has been unable to sell the same at a price considered reasonable.

Wherefore, claimant prays that the objections of the Receiver to the claim of claimant be overruled and that claimant's claim be allowed in the principal sum of \$601,482.80 plus interest thereon as set forth in said claim, less the amounts that have heretofore been collected by claimant upon the collection items as hereinabove set forth, and less the value of the real property and the remaining merchandise held by claimant as soon as the value thereof can properly be ascertained, and for such

other and further relief as may be proper in the premises.

HUGO A. STEINMEYER,
G. L. BERREY, and
JOHN E. WALTER,

By /s/ HUGO A. STEINMEYER,
Attorneys for Claimant, Bank of America National
Trust and Savings Association. [58]

State of California,
County of Los Angeles—ss.

A. J. Robillard, being by me duly sworn, deposes and says; that he is an officer, to wit, an Assistant Secretary of Bank of America National Trust and Savings Association, claimant in the foregoing action, and as such officer is authorized to make oath for and on behalf of said corporation; that he has read the foregoing Answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters he believes it to be true.

/s/ A. J. ROBILLARD.

Subscribed and sworn to before me this 10th day of January, 1948.

[Seal] /s/ CLARA K. DEN,
Notary Public in and for Said
County and State.

[Endorsed]: Filed Jan. 12, 1948. [59]

[Title of District Court and Cause.]

OVERRULING OBJECTIONS TO JURISDICTION AND CONSOLIDATING PROCEEDINGS

George T. Goggin, the Receiver herein, having heretofore filed a "Petition for Order to Show Cause against Bank of America Re: Jacques Power Saw Co." and upon the hearing upon said petition Bank of America National Trust and Savings Association heretofore filed its objections to the jurisdiction of this court to determine said petition in a summary proceeding; and the undersigned Referee having heretofore filed a memorandum opinion upon said objections,

Now, Therefore, It Is Hereby Ordered that said objections to jurisdiction of said Bank of America National Trust and Savings Association be and the same hereby are overruled; and

The Receiver herein having filed "Objections to Claim of the Bank of America National Trust and Savings Association, and Prayer for Affirmative Relief" and the parties having stipulated that the said petition of said Receiver and the said objections to claim might be consolidated for hearing and decision,

Now, Therefore, It Is Hereby Ordered that the "Petition for Order to Show Cause against Bank of America Re: Jacques Power Saw Co." filed herein by the said Receiver on or about November 20, 1947, and the "Objections to Claim of the Bank of America National Trust and Savings Associa-

tion, and Prayer for Affirmative Relief” filed herein by said Receiver on or about December 19, 1947, be and they hereby are consolidated for all purposes of hearing and decision.

Dated: January 12, 1948.

/s/ HUGH L. DICKSON,
Referee.

Approved as to form.

/s/ MARTIN GENDEL,
Counsel for Receiver.

/s/ HUGO A. STEINMEYER,

/s/ G. L. BERREY,

/s/ JOHN E. WALTER,

Counsel for Bank of America National Trust and
Savings Association.

[Endorsed]: Filed Jan. 12, 1948. [61]

[Title of District Court and Cause.]

STIPULATION

It Is Hereby Stipulated by and between George T. Goggin, Receiver herein, through his attorneys Gendel & Chichester, by Martin Gendel, and Bank of America National Trust and Savings Association, a claimant herein, through its counsel, Hugo A. Steinmeyer, G. L. Berrey and John E. Walter, that the “Objections to Claim and Prayer for Affirmative Relief” filed in the above-entitled proceedings on or about December 19, 1947, and the “Petition for Order to Show Cause Against Bank of America

Re: Jacques Power Saw Co.” filed herein on or about the 20th day of November, 1947, may be consolidated for all purposes of trial and decision and that the objections to jurisdiction filed by said Bank of America National Trust and Savings Association, hereinafter for convenience referred to as claimant, shall not be deemed waived by the making of this stipulation.

For all purposes of hearing and decision of said consolidated [62] proceedings, the following facts are hereby stipulated:

I.

On or about February 18, 1946, claimant loaned to the debtor in the above-entitled proceedings the sum of \$180,000 secured by a deed of trust upon the real property upon which the plant of the debtor was located. The said deed of trust provided by its terms that it should secure the repayment of said \$180,000 and any and all other indebtedness of the debtor to claimant whether then existing or thereafter created. Under date of February 18, 1946, claimant entered into an agreement with said debtor by the terms of which claimant agreed to extend credit to the debtor in the aggregate sum of \$500,000, to be repayable in annual installments on or before September 30, 1950. Thereafter on or about September 3, 1946, by an amendment to said agreement, claimant agreed to increase the amount of credit to be extended to the debtor by an additional revolving credit of not to exceed \$450,000 until September 30, 1947. That thereafter claimant loaned to said debtor

the aggregate amount of \$600,000 pursuant to the terms of said credit agreement as amended.

II.

That continuously from the date of said agreement the debtor regularly maintained its deposit accounts with claimant as a bank of deposit. That continuously from the date of said agreement the debtor deposited with claimant for collection and credit to the debtor's commercial deposit account notes and drafts accompanied by order bills of lading evidencing sales of merchandise by the debtor and in the regular course of business said drafts were collected and the proceeds credited to said commercial account. That during the period from June, 1946, until December, 1946, the amount of collection items deposited with claimant averaged from \$40,000 to \$50,000 per month, and during the year [63] 1947 up to August 20, 1947, the collection items so deposited with claimant averaged approximately \$150,000 per month.

III.

On August 19, 1947, the debtor was in default in the payment of its indebtedness to claimant; on said date claimant offset from the various deposit accounts with the debtor the balances thereof in the aggregate amount of \$161,125.55. After the offset of said balances there was due and unpaid on account of the indebtedness of debtor to claimant the principal sum of \$601,482.80 and interest on the sum of \$159,300 from August 13 to August 19, 1947, inclusive, in the sum of \$139.39.

On August 20, 1947, the date of filing the Petition in the above-entitled proceeding, claimant held in its hands the notes or drafts drawn upon drawee purchasers in the amount set opposite their respective names as described and set forth in pages 1 and 2 of Exhibit "A" to the Objections to Claim filed by the receiver herein, and likewise held in its hands in each of said transactions order bills of lading representing the right to receive the merchandise described therein which was in course of shipment to the various drawee purchasers.

IV.

Subsequent to August 20, 1947, claimant collected all of said notes and drafts and delivered the merchandise evidenced by the bills of lading to the drawee purchasers with the exception of the specific transactions hereinafter set forth:

(a) Subsequent to August 20, 1947, Hellgate Motors, Missoula, Montana, rejected payment of the draft for \$1,206.40 described in Exhibit "A"; claimant caused the said merchandise to be diverted to another purchaser who paid the said draft and accepted said merchandise, and claimant received a net amount of \$1,123.86 after deduction of additional freight charges; [64]

(b) The Alton Automotive Sales & Service, Alton, Illinois, rejected payment of one draft for \$17,645.85 and claimant caused said merchandise to be diverted to another purchaser and received a net amount of \$16,995.95 after deducting additional freight charges thereon;

(c) Each of the following drawee-purchasers rejected drafts drawn upon them, to wit:

Drawee-Purchaser	Amount
Motor Scooter Dist. Co., Omaha, Nebraska	\$ 904.80
W. W. Warsaw, Waterloo, Iowa	17,646.00
Neil K. Hoak, Huron, Ohio	1,508.00
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Paszamount Distr. Co., New Brunswick, New Jersey.....	4,222.40
Neil K. Hoak, Huron, Ohio	1,508.00
Harley-Davidson Sales, Gadsden, Alabama	1,508.00
Alton Automotive Sales & Service, Alton, Illinois	17,645.85
	<hr/>
	\$46,149.45

Thereafter claimant caused the merchandise forwarded with said drafts consisting of 153 scooters to be returned to Pomona, California, and temporarily stored in the plant of the debtor under the terms of an agreement in writing designated "Agreement and Order Concerning Possession and Sale of Motor Scooters" entered into between George T. Goggin, Receiver of Salsbury Motors,

Inc., Debtor, and claimant under date of September 22, 1947, and confirmed and approved by an order of the Honorable Hugh L. Dickson, Referee, in the above-entitled proceedings on September 23, 1947; that said agreement is hereby expressly referred to and incorporated herein [65] with like effect as though herein set forth in full.

Claimant incurred liability for and paid freight and demurrage charges in the aggregate amount of \$4,931.47 in causing the said 153 motor scooters to be returned to the plant of the debtor at Pomona, California. Thereafter claimant employed the debtor through the receiver herein to perform work and services upon said motor scooters and paid to the receiver the sum of \$1,461.86, representing the cost thereof. On or about October 16, 1947, claimant was informed by the receiver that sales of motor scooters had dropped off rapidly. In the latter part of November, 1947, the receiver had not sold all of the motor scooters then on hand and was unable to find a purchaser for the 153 motor scooters held by claimant. In the latter part of November claimant endeavored to secure a purchaser for said 153 motor scooters and on December 2, 1947, sold the said 153 motor scooters for the sum of \$34,425, which was the best and only price claimant was able to secure upon the sale thereof.

(d) The Motorette Corp., Buffalo, New York, rejected two drafts for \$4,775.00 each, each of which was accompanied by bills of lading entitling the holder to 50 engines; that claimant caused the said

engines to be stored in Buffalo, New York, pending a possible sale thereof. Claimant has incurred and paid insurance and warehouse charges in the sum of \$82.01 on said engines, and further charges are accruing. No purchaser for the said engines has been found.

V.

Included among the said collection items listed and described in Exhibit "A" to said Objections was a promissory note executed by the Jacques Power Saw Co. of Denison, Texas, payable to the debtor in the principal amount of \$35,837 on July 16, 1947. The said promissory note was deposited by the debtor with the claimant [86] on or about July 8, 1947, for collection and credit to the commercial deposit account of the debtor and was transmitted to the correspondent of claimant in Denison, Texas. Payment of said note was refused and it was returned to claimant on or about July 31, 1947. On or about August 1, 1947, claimant informed the debtor that said note had been returned and debtor instructed claimant to re-submit the said note for collection.

On or about June 30, 1947, the debtor had issued on its books but had not completed carrying forward a credit memorandum of \$1,163.50 to said Jacques Power Saw Co. to cover undelivered items which had originally been included in the amount of the note.

On August 21, 1947, the debtor delivered to claimant a letter in words and figures as follows:

August 21, 1947.

“Bank of America National
Trust and Savings Association
Pomona, California

Attn: Mr. Farrand

Gentlemen:

On July 8, 1947, we deposited with you for collection a promissory note on which Jacques Power Saw Company of Denison, Texas, was the payor and Salsbury Motors, Inc., was the payee. The note was due July 16, 1947, and was in the principal amount of \$35,837.00.

Please be advised that your authority to collect said note is hereby terminated, effective immediately. Collection will be effected by direct dealings between ourselves and Jacques Power Saw Company.

Very truly yours,

SALSBURY MOTORS, INC.

/s/ G. R. CASE,
General Manager.”

On or about August 22, 1947, the debtor agreed with the maker of the note that the credit memorandum of \$1,163.50 was a proper credit upon the note. On or about August 25, 1947, the maker of the note paid the net amount of \$34,653.50 to claimant's correspondent bank [67] in Denison, Texas, upon

surrender of the note and said funds were received by claimant on or about August 27, 1947.

VI.

None of the notes and drafts or bills of lading accompanying the same deposited by the debtor with claimant as collection items during the course of the operation of the business of the debtor from the time of the loan agreement on February 18, 1946, to the date of filing the petition in the above-entitled proceedings was at any time pledged by the debtor to secure any indebtedness of the debtor to claimant. No immediate credit was given by claimant to the deposit accounts of the debtor upon the deposit of any of said collection items but all of said items were deposited with claimant for collection and credit of the proceeds of the collection to the deposit account of the debtor when said collections were completed. During the period from February 18, 1946, to August 19, 1947, claimant did, in the usual course of business, credit to the deposit account of the debtor, as and when received, the proceeds of all collection items in accordance with the instructions of the debtor. In each of the collection items in the hands of claimant on August 20, 1947, the debtor had issued and claimant had accepted instructions to credit the proceeds of said collections when received to the commercial deposit account of the debtor.

It is further stipulated that upon the hearing of the said Objections either party may introduce ad-

ditional evidence not inconsistent with the facts hereinabove stipulated.

Dated: January 12, 1948.

/s/ MARTIN GENDEL,

Counsel for George T.

Goggin, Receiver.

HUGO A. STEINMEYER,

G. L. BERREY, and

JOHN E. WALTER.

By /s/ HUGO A. STEINMEYER,

Counsel for Bank of America National Trust and Savings Association, Claimant. [68]

SUPPLEMENT

On or about September 8, 1947, claimant duly filed its Proof of Claim against the estate of the above-named debtor for the principal sum of \$601,-482.80, together with interest thereon as therein set forth.

Claimant has refused to turn over to the Receiver any of the notes, drafts or collection items hereinbefore referred to or the proceeds thereof.

/s/ MARTIN GENDEL,

Counsel for George T.

Goggin, Receiver.

HUGO A. STEINMEYER,

G. L. BERREY, and

JOHN E. WALTER.

By /s/ HUGO A. STEINMEYER,

Counsel for Bank of America National Trust and Savings Association, Claimant.

[Endorsed]: Filed Jan. 12, 1948. [69]

[Title of District Court and Cause.]

MEMORANDUM OPINION ON CLAIM OF BANK OF AMERICA

The Receiver has filed in these proceedings objections to the claim of Bank of America National Trust and Savings Association coupled with a prayer for affirmative relief by which he seeks to recover from said Bank property which was in the Bank's possession at the date of the filing of the petition and upon which the Bank has asserted a general banker's lien for the indebtedness of the debtor to the bank.

The facts in this controversy are stipulated to so that there is no dispute on that point and it only remains to decide the legal question involved.

After reading the many, many cases cited by parties on both sides, I am satisfied that the true answer to the question is to be found in the case of *Golsalves v. Bank of America*, 16 Cal. (2d) 169 (1940), where at page 173 the Court said:

“To understand this exercise of the bank's right it is necessary to state briefly its nature. Section 3054 of the Civil Code provides: ‘A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.’ The banker's lien described in this statute is, properly speaking, a lien on the securities such as commercial paper deposited with the bank

by the customer in the course of business. The so-called 'lien' of the bank on the depositor's account or funds on deposit is not technically a lien, for the bank is the owner of the funds and the debtor of the depositor, and the bank cannot have a lien on its own property. The right of the bank to charge the depositor's fund with his matured indebtedness is more correctly termed a right of setoff, based upon general principles of equity. (See *Pendleton v. Hellman Commercial T. & S. Bank*, 58 Cal. App. 448 (208 Pac. 702); 11 Cal. L. Rev. 111, 112; 7 Cal. L. Rev. 341; 38 Harv. L. Rev. 800; Brown on Personal Property, p. 519.)"

As I said above, I am satisfied that the case affords the true construction of Section 3054 of the Civil Code of California, which gives a banker a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

In this case it appears that it was the practice of the debtor to place sight drafts and other commercial paper for collection with the Bank of America, and as and when said drafts were collected the said amount was to be credited to the account of the debtor. The drafts in dispute in this matter were deposited in that course of business.

Therefore, I hold that the Bank is entitled to retain the money which it collected upon these sight drafts and that the claim as filed by the Bank of America, which is undisputed, be allowed.

Counsel for the Bank will prepare appropriate findings of fact, conclusion of law and order, and serve a copy of the same upon opposing counsel.

Dated this 4th day of March, 1948.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: Filed Mar. 4, 1948. [72]

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER ALLOWING CLAIM

The Receiver herein, George T. Goggin, heretofore filed in the above entitled proceeding a "Petition for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co." which Petition came on for hearing upon Order to Show Cause directed to Bank of America National Trust and Savings Association on December 2, 1947, at which time said Bank filed written objections to the jurisdiction of the Referee to make an order upon said Petition; and

Thereafter George T. Goggin, Receiver herein, filed "Objections to Claim of the Bank of America National Trust & Savings Association, and Prayer for Affirmative Relief" and the Claimant, Bank of America National Trust and Savings Association, filed its answer to said objections; and

The said objections to the claim came on for hearing before the Referee on January 12, 1948, the Receiver being represented by his attorneys Gendel &

Chichester appearing by Martin [73] Gendel, and the Claimant being represented by its attorneys Hugo A. Steinmeyer and John E. Walter; and

The Referee made and filed an Order Overruling Objections to Jurisdiction and consolidating Proceedings by which the "Petition for Order to Show Cause against Bank of America Re: Jacques Power Saw Co." filed herein by the Receiver on or about November 20, 1947, and "Objections to Claim of the Bank of America National Trust & Savings Association and Prayer for Affirmative Relief" filed herein by said Receiver on or about December 1, 1947, were consolidated for all purposes of hearing and decision; and

The parties having stipulated to the facts involved in said petitions by a stipulation in writing filed in said proceedings and the cause having been argued by respective counsel and submitted to the Referee and the Referee being fully advised in the premises having made and filed a "Memorandum Opinion on Claim of Bank of America";

Now, Therefore, the Referee does hereby make the following

FINDINGS OF FACT

I.

It is true, as alleged in paragraph II of the Receiver's objections, that Bank of America National Trust and Savings Association, hereinafter referred to as the Claimant, did file a proof of claim in the within debtor proceedings entitled "In Proceedings

Under Chapter XI, Section 322 of the Bankruptcy Act, Proof of Partially Secured Debt'', which proof of claim disclosed that said Claimant held partial security for the said indebtedness set forth therein. It is not true that said claim is a contingent claim. The allegations of the second paragraph of paragraph II of the said objections of the Receiver are untrue. The allegations of the third paragraph of paragraph II are untrue. [74]

II.

On or about February 18, 1946, Claimant loaned to the debtor in the above entitled proceedings the sum of \$180,000 secured by a deed of trust upon the real property upon which the plant of the debtor was located. The said deed of trust provided by its terms that it should secure the repayment of said \$180,000 and any and all other indebtedness of the debtor to claimant whether then existing or thereafter created. Under date of February 18, 1946, Claimant entered into an agreement with said debtor by the terms of which Claimant agreed to extend credit to the debtor in the aggregate sum of \$500,000, to be repayable in annual installments on or before September 30, 1950. Thereafter on or about September 3, 1946, by an amendment to said agreement, Claimant agreed to increase the amount of credit to be extended to the debtor by an additional revolving credit of not to exceed \$450,000 until September 30, 1947. That thereafter Claimant loaned to said debtor the aggregate amount of \$600,000 pursuant to the terms of said credit agreement as amended.

III.

That continuously from the date of said agreement the debtor regularly maintained its deposit accounts with Claimant as a bank of deposit. That continuously from the date of said agreement the debtor deposited with Claimant for collection and credit to the debtor's commercial deposit account notes and drafts accompanied by order bills of lading evidencing sales of merchandise by the debtor and in the regular course of business said drafts were collected and the proceeds credited to said commercial account. That during the period from June, 1946, until December, 1946, the amount of collection items deposited with Claimant averaged from \$40,000 to \$50,000 per month, and during the year 1947 up to August 20, 1947, the collection items so deposited [75] with Claimant averaged approximately \$150,000 per month.

IV.

On August 19, 1947, the debtor was in default in the payment of its indebtedness to Claimant; on said date Claimant offset from the various deposit accounts with the debtor the balances thereof in the aggregate amount of \$161,125.55. After the offset of said balances there was due and unpaid on account of the indebtedness of debtor to Claimant the principal sum of \$601,482.80 and interest on the sum of \$159,300 from August 13 to August 19, 1947, inclusive, in the sum of \$139.39.

On August 20, 1947, the date of filing the Petition in the above entitled proceeding, Claimant held in its hands notes or drafts drawn upon drawee pur-

chasers in the amounts set opposite their respective names as described and set forth in pages 1 and 2 of Exhibit "A" to the Objections to Claim filed by the Receiver herein, and likewise held in its hands in each of said transactions order bills of lading representing the right to receive the merchandise described therein which was in course of shipment to the various drawee purchasers.

V.

Subsequent to August 20, 1947, Claimant collected all of said notes and drafts and delivered the merchandise evidenced by the bills of lading to the drawee purchasers with the exception of the specific transactions hereinafter set forth:

(a) Subsequent to August 20, 1947, Hellgate Motors, Missoula, Montana, rejected payment of the draft for \$1,206.40 described in Exhibit "A"; Claimant caused the said merchandise to be diverted to another purchaser who paid the said draft and accepted said merchandise, and Claimant received a net amount of \$1,123.86 after deduction of additional freight charges;

(b) The Alton Automotive Sales & Service, Alton, [76] Illinois, rejected payment of one draft for \$17,645.85 and Claimant caused said merchandise to be diverted to another purchaser and received a net amount of \$16,995.95 after deducting additional freight charges thereon;

(c) Each of the following drawee-purchasers rejected drafts drawn upon them, to wit:

Drawee-Purchaser	Amount
Motor Scooter Dist. Co., Omaha, Nebraska	\$ 904.80
W. W. Warsaw, Waterloo, Iowa	17,646.00
Neil K. Hoak, Huron, Ohio	1,508.00
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Beecroft & Lund, West Palm Beach, Florida.....	603.20
Paszamount Distr. Co., New Brunswick, New Jersey.....	4,222.40
Neil K. Hoak, Huron, Ohio	1,508.00
Harley-Davidson Sales, Gadsden, Alabama	1,508.00
Alton Automotive Sales & Service, Alton, Illinois	17,645.85
	<hr/>
	\$46,149.45

Thereafter Claimant caused the merchandise forwarded with said drafts consisting of 153 scooters to be returned to Pomona, California, and temporarily stored in the plant of the debtor under the terms of an agreement in writing designated "Agreement and Order Concerning Possession and Sale of Motor Scooters" entered into between George T. Goggin, Receiver of Salsbury Motors, Inc., Debtor, and Claimant under date of September 22, 1947, and confirmed and approved by an order of the Honorable Hugh L. Dickson, Referee in the above entitled proceedings, on September 23, 1947. [77]

Claimant incurred liability for and paid freight and demurrage charges in the aggregate amount of \$4,931.47 in causing the said 153 motor scooters to be returned to the plant of the debtor at Pomona, California. Thereafter Claimant employed the debtor through the Receiver herein to perform work and services upon said motor scooters and paid to the Receiver the sum of \$1,461.86, representing the cost thereof. On or about October 16, 1947, Claimant was informed by the Receiver that sales of motor scooters had dropped off rapidly. In the latter part of November, 1947, the Receiver had not sold all of the motor scooters then on hand and was unable to find a purchaser for the 153 motor scooters held by Claimant. In the latter part of November Claimant endeavored to secure a purchaser for said 153 motor scooters and on December 2, 1947, sold the said 153 motor scooters for the sum of \$34,425, which was the best and only price Claimant was able to secure upon the sale thereof.

(d) The Motorette Corp., Buffalo, New York, rejected two drafts for \$4,775.00 each, each of which was accompanied by bills of lading entitling the holder to 50 engines; that Claimant caused the said engines to be stored in Buffalo, New York, pending a possible sale thereof. Claimant has incurred and paid insurance and warehouse charges in the sum of \$82.01 on said engines, and further charges are accruing. At the date of hearing no purchaser for the said engines had been found.

VI.

Claimant has received \$150,510.71 as the proceeds of collection items having a face amount of \$169,400.93 and said \$150,510.71 constitutes a reduction of Claimant's claim against the estate of the debtor.

VII.

Included among the said collection items listed and described [79] in Exhibit "A" to said Objections was a promissory note executed by the Jacques Power Saw Company of Denison, Texas, payable to the debtor in the principal amount of \$35,837 on July 16, 1947. The said promissory note was deposited by the debtor with the Claimant on or about July 8, 1947, for collection and credit to the commercial deposit account of the debtor and was transmitted to the correspondent of Claimant in Denison, Texas. Payment of said note was refused and it was returned to Claimant on or about July 31, 1947. On or about August 1, 1947, Claimant informed the debtor that said note had been returned and debtor instructed Claimant to re-submit the said note for collection.

On or about June 30, 1947, the debtor had issued on its books but had not completed carrying forward a credit memorandum of \$1,163.50 to said Jacques Power Saw Company to cover undelivered items which had originally been included in the amount of the note.

On August 21, 1947, the debtor delivered to Claimant a letter in words and figures as follows:

August 21, 1947

“Bank of America
National Trust and Savings Association
Pomona, California

Attn.: Mr. Farrand

Gentlemen:

On July 8, 1947 we deposited with you for collection a promissory note on which Jacques Power Saw Company of Denison, Texas, was the payor and Salsbury Motors, Inc., was the payee. The note was due July 16, 1947, and was in the principal amount of \$35,837.00.

Please be advised that your authority to collect said note is hereby terminated, effective immediately. Collection will be effected by direct dealings between ourselves and Jacques Power Saw Co.

Very truly yours,

SALSBURY MOTORS, INC.,

/s/ G. R. CASE,

General Manager.” [80]

On or about August 22, 1947, the debtor agreed with the maker of the note that the credit memorandum of \$1,163.50 was a proper credit upon the note. On or about August 25, 1947, the maker of the note paid the net amount of \$34,653.50 to Claimant's correspondent bank in Denison, Texas, upon surrender of the note and said funds were received by Claimant on or about August 27, 1947. Said sum of \$34,653.50 is part of the aggregate sum of \$150,510.71 received

by Claimant as specified in paragraph VI of these findings.

VIII.

None of the notes and drafts or bills of lading accompanying the same deposited by the debtor with Claimant as collection items during the course of the operation of the business of the debtor from the time of the loan agreement on February 18, 1946, to the date of filing the petition in the above entitled proceedings was at any time pledged by the debtor to secure any indebtedness of the debtor to Claimant. No immediate credit was given by Claimant to the deposit accounts of the debtor upon the deposit of any of said collection items but all of said items were deposited with Claimant for collection and credit of the proceeds of the collection to the deposit account of the debtor when said collections were completed. During the period from February 18, 1946, to August 19, 1947, Claimant did, in the usual course of business, credit to the deposit account of the debtor, as and when received, the proceeds of all collection items in accordance with the instructions of the debtor. In each of the collection items in the hands of Claimant on August 20, 1947, the debtor had issued and Claimant had accepted instructions to credit the proceeds of said collections when received to the commercial deposit account of the debtor.

IX.

On or about September 8, 1947, Claimant duly filed its [81] proof of claim against the estate of the above named debtor for the principal sum of \$601,482.80, together with interest thereon as therein set forth.

Claimant has refused to turn over to the Receiver any of the notes, drafts or collection items hereinbefore referred to or the proceeds thereof.

X.

To the extent that they may be inconsistent with the foregoing facts, the allegations of paragraphs IV, V, VI and VII of the Receiver's objections to claim are untrue.

XI.

The allegations of paragraphs IV, VI and VII of Claimant's answer to objections to claim are true.

XII.

The allegations of paragraph I of the separate defense of Claimant to the said objections are true.

And from the foregoing Findings of Fact, the Referee makes the following

CONCLUSIONS OF LAW

I.

The Claimant is entitled to hold the said collection items that were in the hands of Claimant at the date of filing the Petition in the above-entitled proceedings under its claim of a general banker's lien and to hold the proceeds of such collections or the sale of the property represented thereby and apply the same upon the indebtedness of debtor to Claimant.

II.

The Receiver is not entitled to the possession of the collection items in the hands of the Claimant at the time of filing the Petition in the above-entitled

proceedings and is not entitled to any of the proceeds of said collections. [82]

III.

The receiver's objections to claim of Claimant should be overruled and said claim allowed for the principal sum of \$601,482.80, plus interest in the sum of \$139.39 as set forth in said claim, from which shall be deducted the sum of \$150,510.71 received by Claimant upon collection items in the hands of Claimant on August 20, 1947, and subject to the requirements that there shall be applied upon the balance of said indebtedness the net proceeds of the sale of the real property securing said indebtedness and the net amounts received by Claimant upon the collection items described in Finding V(d) or the sale of the motors referred to therein.

IV.

Claimant is entitled to participate as an unsecured creditor in all dividends paid upon unsecured claims for the balance of its claim as so determined.

Now, Therefore, from the foregoing Findings of Fact and Conclusions of Law, the Referee makes the following

ORDER

It Is Hereby Ordered that the Receiver's "Petition for Order to Show Cause Against Bank of America Re: Jacques Power Saw Co." be and it hereby is denied; and

It Is Further Hereby Ordered that the objections of the Receiver to the claim of Bank of

America National Trust and Savings Association heretofore filed herein be and the same are hereby overruled and the prayer for affirmative relief of said Receiver be and it is hereby denied; and

It Is Further Hereby Ordered that the claim of Bank of America National Trust and Savings Association filed herein is hereby allowed in the sum of \$601,482.80 principal, and interest in the sum of \$139.39, from which there shall be deducted the sum [83] \$150,510.71 heretofore received by said Claimant from the proceeds of collection items in its possession at the date of filing the Petition in the above-entitled proceedings, and subject to the requirement that the net proceeds of the sale of the real property securing said indebtedness and the net proceeds of the remaining uncollected collection items in the possession of said Claimant shall be applied in reduction of the balance of said claim; and

It Is Further Ordered that said Claimant shall be entitled to dividends upon the said claim at the same rate paid to unsecured creditors when the remainder of the security held by said Claimant has been liquidated and the proceeds applied upon the unpaid balance of said claim.

Done in open court this 22nd day of March, 1948.

/s/ HUGH L. DICKSON,
Referee in Bankruptcy.

[Endorsed]: Filed Mar. 16, 1948. [84]

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER OF MARCH 22, 1948 ALLOWING
THE CLAIM OF BANK OF AMERICA

To The Honorable Hugh L. Dickson, Referee in
Bankruptcy:

Comes now your petitioner, George T. Goggin,
and respectfully represents as follows:

I.

That he is the duly appointed, qualified and acting
Receiver in the within Chapter XI reorganization
proceedings.

II.

That your petitioner filed a petition for order to
show cause against the Bank of America National
Trust & Savings Association (hereinafter referred
to as "Bank of America"), involving a note of the
Jacques Power Saw Co., which petition duly came
on for hearing before this Court pursuant to an
order to show cause, on December 2, 1947; that the
petition was first duly submitted on the issue of
objection to the jurisdiction of this Court by the
Bank of America and the said objections to jurisdic-
tion were overruled by opinion of this Court filed on
December 8, 1947. [86]

III.

That the Bank of America filed a proof of claim
in the within debtor proceedings, dated September
8, 1947, and entitled "In Proceedings Under Chapter
XI, Section 322 of the Bankruptcy Act, Proof of

Partially Secured Debt''; that your petitioner, on or about December 19, 1947, filed written objections to the claim of Bank of America, and prayed therein for affirmative relief to the extent of \$178,950.93; by written stipulation dated January 12, 1948, the hearing on the merits of the petition and the order to show cause re Jacques Power Saw Company and on the objections to the claim of Bank of America and prayer for affirmative relief, were duly consolidated and the matters submitted before this Court for hearing on January 12, 1948; the matter having been duly submitted, this Honorable Court on the 4th day of March, 1948, filed a Memorandum Opinion disallowing the objections of your petitioner to the claims of the Bank of America, and the prayer for affirmative relief and denying any relief to your petitioner on the order to show cause re Jacques Power Saw Company; thereafter counsel for the Bank of America presented proposed findings of fact, conclusions of law and order and your petitioner submitted specifications of objections to the aforesaid findings of fact.

IV.

That on or about March 22, 1948, the above entitled Court made and filed its written findings of fact and conclusions of law, and, based thereon, made its order as follows:

“It Is Hereby Ordered that the Receiver’s “Petition for Order to Show Cause against Bank of America re Jacques Power Saw Company” be and it hereby is denied; and

“It Is Further Hereby Ordered that the objections of the Receiver to the claim of Bank of America

National Trust and Savings Association heretofore filed herein be and the same are hereby overruled and the prayer for affirmative relief of said [87] Receiver be and it is hereby denied; and

“It Is Further Hereby Ordered that the claim of Bank of America National Trust and Savings Association filed herein is hereby allowed in the sum of \$601,482.80 principal, and interest in the sum of \$139.39, from which there shall be deducted the sum of \$150,510.71 heretofore received by said claimant from the proceeds of collection items in its possession at the date of filing the petition in the above entitled proceedings, and subject to the requirements that the net proceeds of the sale of the real property securing said indebtedness and the net proceeds of the remaining uncollected collection items in the possession of said Claimant shall be applied in reduction of the balance of said claim; and

“It Is Further Ordered that said claimant shall be entitled to dividends upon the said claim at the same rate paid to unsecured creditors when the remainder of the security held by said claimant has been liquidated and the proceeds applied upon the unpaid balance of said claim.

Done in open court this 22nd day of March, 1948.

HUGH L. DICKSON,
Referee in Bankruptcy.”

V.

That said order is erroneous for the following reasons:

(a) That said order is predicated upon findings of fact which do not have any substantial evidence in

support thereof, or are contrary to the evidence, in the following particulars:

(1) The findings of fact fail to include the evidence introduced before this Court by oral stipulation in the hearings on the Jacques Power Saw Company matter, held before this Court on December 2, 1947;

(2) That paragraphs V and VI of the findings of fact, and the portions of the order predicated thereon, and all the allegations contained therein, are unsupported by any evidence whatsoever. [88]

(3) That the findings of fact are contrary to the evidence, in that they do not clearly reflect that the notes and drafts in question were placed by the debtor in the hands of the Bank of America for collection only, and that not until after the collections were made was the moneys to be deposited in the commercial account of the debtor; that no collections were made on said notes and drafts, in question, prior to August 20, 1947, the date of commencement of the within Chapter XI proceedings, and, as of that date, and prior to the collection of the monies, demand for the notes and drafts was made by petitioner, as receiver, and refused by the Bank of America.

(b) Since the Bank of America held the notes and drafts in the face amount of \$178,950.93, as agent of the debtor, and for the special purpose of collection, only, said bank violated its limited authority by refusing to turn over the notes and drafts to your petitioner, as receiver; therefore, the bank converted the notes and drafts and became indebted to your petitioner in the sum of \$178,950.93, having violated

the limited rights accruing to the bank by virtue of having only custody of the notes and drafts as agent of the debtor and Receiver.

(c) That the Bank of America had no right of set-off against the said notes and drafts, there being no status of mutual creditor and debtor as required by the Bankruptcy Act, particularly Section 68(a)1 thereof. The only relationship being that of principal and agent, not of debtor and creditor, as far as the notes and drafts are concerned, the Bank of America should have been directed by the Court to turn over the said sum of \$178,950.93.

(d) The Bank of America had no general banker's lien nor any lien by virtue of Section 3054 of the Civil Code of the State of California, for the reason that it had extended no credit in reliance upon the anticipated collection of the notes and drafts, and [89] had custody of the notes and drafts for the limited and special purpose, only, of collecting same and had not collected the monies thereon as of the commencement of the within debtor proceedings on August 20, 1947; upon which date the rights of the estate and creditors were frozen and the bank could not thereafter acquire any banker's lien, particularly since it had only custody, not possession, of the notes and drafts.

VI.

In connection with the within petition for review, your petitioner respectfully requests that the following documents be certified to the District Judge:

1. Petition of George T. Goggin, for Order to Show Cause against Bank of America, re Jacques Power Saw Company, filed November 20, 1947.

2. Order to Show Cause predicated on said petition above referred to.

3. Objections of Bank of America National Trust & Savings Association to Jurisdiction of the Court in a Summary Proceeding against said Bank relating to a controversy concerning the lien and right of offset of the Bank on a Promissory Note and the proceeds received in payment thereof, filed on December 2, 1947.

4. Memorandum Opinion of this Court overruling the objection to jurisdiction, dated December 8, 1947.

5. Proof of claim of Bank of America, dated September 8, 1947.

6. Objections to Claim of Bank of America National Trust & Savings Association, and prayer for affirmative relief, filed by George T. Goggin, receiver, on December 19, 1947.

7. Stipulation and Supplement thereto, between George T. Goggin, as receiver, and the Bank of America, etc., dated January 12, 1948. [90]

8. Reporter's Transcript of oral stipulation re Jacques Power Saw Company, made before this Court on December 2, 1947.

9. Opening Memorandum of Receiver in Support of Objections to Claim of Bank of America, and Prayer for Affirmative Relief.

10. Claimant's Points and Authorities in Opposition to Objections to Claim, filed by the Bank of America.

11. Closing Memorandum of Receiver in Support of Objections to Claim of Bank of America, and Prayer for Affirmative Relief.

12. Reply to Closing Memorandum of Receiver in

Support of Objections to Claim of Bank of America,
and Prayer for Affirmative Relief.

13. Reply of Receiver to the Reply to Closing
Memorandum of Receiver.

14. Memorandum of Opinion filed by this Court
on the consolidated matters involved, filed on March
4, 1948.

15. Specifications of Objections to Findings of
Fact and Order allowing claim filed by George T.
Goggin, as Receiver herein.

16. Findings of Fact, Conclusions of Law and
Order of the Referee, dated March 22, 1948, denying
relief sought by the Receiver herein with reference
to the Bank of America.

17. The within Petition for Review.

Wherefore, your petitioner prays for a review of
said order of March 22, 1948, by the Judge of the
District Court, and that said order be reversed and
that the objections of George T. Goggin, as receiver,
to the claims of the Bank of America, be sustained,
and that the prayer for relief be granted and said
Bank of America be ordered to pay to this estate the
sum of \$178,950.93.

Dated April 7th, 1948.

/s/ GEORGE T. GOGGIN,
Receiver Petitioner.

/s/ MARTIN GENDEL,
Of Counsel for Receiver.

(Duly Verified.)

[Endorsed]: Filed April 7, 1948. [97]

[Gendel & Chichester Letterhead.]

April 16, 1948

Honorable Hugh L. Dickson
Referee in Bankruptcy
343 Federal Building
Los Angeles, California

Re: Salsbury Motors, Inc.—(Bank of America
Petition on Review)

Dear Judge Dickson:

In checking over the documents being forwarded in connection with your Certificate on Review, I noted that item No. 15, designated as "Specifications of Objections to Findings of Fact and Order Allowing Claim Filed by George T. Goggin, as Receiver Herein", has been omitted from your Certificate on Review.

No doubt you will recall that in the courtroom of Judge Mathes on March 18, 1948, I requested an extension of the usual time within which specifications of objections to proposed findings should be filed, because of being involved in the then pending and complicated legal matters. As I understood your Honor, the findings as submitted by Mr. Steinmeyer were to be held so that I would have an opportunity to file my specifications. Upon examining the record, I find that the findings as submitted by Mr. Steinmeyer and the conclusions and order were signed by yourself on March 22, 1948, and, there is a separate notation on the specifications to the effect that they were denied as of March 23, 1948, the date on which they were filed.

I have spoken to Mr. Steinmeyer concerning this proposed request that the Certificate on Review be supplemented by forwarding the specifications of objections, and, as I understand it, Mr. Steinmeyer has no objection to this procedure.

In the presentation of the review to the District Judge, the filing of objections to the proposed findings may become a matter of inquiry, and, therefore, it would appear necessary to protect the rights of the Receiver by having the specifications of objections as part of the record before the District Judge.

Your cooperation in this matter would be appreciated.

Respectfully yours,

/s/ MARTIN GENDEL.

mg;ma cc: Hugo A. Steinmeyer, Esq. [101]

[Endorsed]: Filed April 20, 1948.

[Title of District Court and Cause.]

SPECIFICATIONS OF OBJECTIONS TO
FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER ALLOWING CLAIM

Comes now George T. Goggin, as receiver herein, and through his counsel, in objection to the findings of fact, conclusions of law, and order allowing claim, makes the following specifications:

I.

On page 2, lines 11 to 16, the sentence contained therein should be rephrased to read as follows:

“The parties having stipulated to the facts involved in the said petitions by an oral stipula-

tion in the Jacques Power Saw matter, and a stipulation in writing filed in the subsequent objection proceedings and the cause having been argued by respective counsel and submitted to the Referee, and the Referee being fully advised in the premises having made and filed a 'Memorandum Opinion on Claim of Bank of America';"

II.

The sentence at lines 28 to 29 on page 2, should be stricken, reading as follows: [102]

"It is not true that said claim is a contingent claim."

When the claim was filed, neither the collections nor the valuation of the real property secured had been determined, and obviously the claim was contingent.

III.

In paragraph III, page 3, line 21, the words "most of" should be inserted after the word "mentioned", and at line 23 a comma should be inserted after the word "collection" and the words "when collected" should be inserted before the word "and".

IV.

In paragraph IV the word "cash" should be inserted in line 5, before the word "balances".

V.

Paragraphs V and VI, in their entirety, are not supported by any evidence introduced in the hearings.

VI.

In paragraph VIII, on page 8, at line 30, there should be inserted the following clause, after the

word "debtor", which word should be followed by a semi-colon:

"however, no credit had been extended in reliance upon said collection items, and no part thereof had been collected on August 20, 1947, when the receiver demanded the return of the collection items."

VII.

Obviously, it is difficult for counsel for the receiver to urge suggested changes in the conclusions of law and order, for the reason that we are convinced that the recognizable weight of authority is contrary to the position of the bank. We therefore shall not seek to affect the conclusions of law and order of this Court, believing that the matters involved therein will ultimately be determined on appeal. However, it may be of assistance [103] to this Court to point out that the receiver and the Bank of America have agreed that the amount to be allocated to the release of the real property, and the improvements thereon, shall be the sum of \$250,000.00.

Wherefore, the receiver herein respectfully prays that the within specifications of objections to the findings of fact, conclusions of law and order allowing claim, be adopted by this Court.

GEORGE T. GOGGIN,

Receiver.

By /s/ MARTIN GENDEL,

Of Counsel for Receiver.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 20, 1948. [104]

[Title of District Court and Cause.]

HEARING ON ORDER TO SHOW CAUSE ON BANK OF AMERICA

The following is a stenographic transcript of the proceedings had in the above entitled cause, which came on for hearing before the Honorable Hugh L. Dickson, Referee in Bankruptcy, at his courtroom, 343 Federal Building, Los Angeles, California, at 2:30 p.m., on Tuesday, December 2, 1947.

Appearances: Martin Gendel, Esq., appearing on behalf of the Receiver, George T. Goggin. Hugo A. Steinmeyer, Esq., appearing on behalf of the Bank of America. [94]

* * * *

Mr. Gendel: It would be stipulated as follows:

That the Debtor herein in 1946 entered into a sizable lending transaction with the Bank of America in excess of \$500,000. That during the year 1946 the average on collections made by the Bank of America on behalf of the Debtor was \$40,000 to \$50,000. That there was apparently an implied understanding between the Bank of America and the Debtor corporation that all of the usual banking transactions would be handled through the Bank of America and the deviations from that were minor and only for reasons of convenience with the knowledge and consent of the bank and the implied understanding included that as to collections or notes or sight drafts or bills of lading that they would be handled through the collection department of the Bank of America.

That on or about July 8, 1947, the Debtor deposited

with the Bank of America for collection a note payable by the Jacques Power Saw Company of Denison, Texas, to the Debtor corporation, the proceeds of which when obtained to be deposited in their regular commercial account. This note was due and payable on July 16, 1947 in the face amount of \$35,837. That on or about June 30, 1947, the Debtor corporation had issued on its books but had not apparently completed carrying forward a credit memorandum of \$1,163.50, which credit memo was issued to [95] cover undelivered items which had originally been included in the amount reflected by the note. So that the actual amount owing on that note was \$34,653.50. That the Bank of America forwarded the note for collection to a bank in Denison, Texas. That payment on that note was originally refused by the payer and the note was returned to the Bank of America on or about July 31, or August 1, 1947, as uncollected, and the Debtor was so informed. On or about August 1, 1947, the Debtor again redeposited the note for collection and it was again forwarded to the Denison bank for payment.

Mr. Steinmeyer: Just at that point if I may interrupt. The note was not delivered by the bank to the Debtor. It was received by the bank and then the Debtor gave you instructions to the bank to resubmit it again to the maker.

Mr. Gendel: I think that is correct. We will so stipulate. That is, that the note physically didn't leave the bank; it came back to the bank. Conversation was had with the Debtor and then the bank was instructed to forward it again for collection. That on August 19, 1947, the bank shut off all credits or

allowances to the Debtor to draw on any of the funds in the Bank of America.

Mr. Steinmeyer: That was on the afternoon of August 19.

Mr. Gendel: The afternoon of August 19, at the close of business, the bank shut off any right on behalf of the [96] Debtor to draw on any of its funds. Then on August 20, 1947 the Debtor filed its petition for reorganization before this Court. That on August 21, 1947 there was delivered to the Bank of America the original of this notice advising that authority to collect on the particular note in question had been terminated and we have stipulated, your Honor, that this copy may be introduced as part of the stipulation of facts on behalf of the Receiver, showing that on or about August 22, 1947 the Bank of America authorized its forwarding bank to allow the credit claim of \$1,163.50.

Mr. Steinmeyer: May I interrupt there. I think that the correct statement there is that on or about August 22, 1947 the Debtor agreed with the maker of the note that the credit of \$1,163.50 would be allowed on the note and attempted to collect the money direct from the maker of the note.

Mr. Gendel: Yes; that is substantially correct, and I think in addition thereto we should stipulate that the Bank of America authorized the forwarding bank to accept the lesser sum.

Mr. Steinmeyer: That is correct.

Mr. Gendel: That on or about August 25 or August 26, 1947 the money on the note, the net

amount of \$34,653.50 was paid to the forwarding bank and the receipt of the money at the Bank of America appears to have been acknowledged [97] on August 27, 1947.

It is further stipulated that at no time was the Debtor given credit in its bank account or bank dealings with the Bank of America to draw on this particular note.

Mr. Steinmeyer: Or any item given for collection until it was collected.

Mr. Gendel: Or any item that was handled by the bank customarily for collection until the item had actually been collected by the bank and then deposited in its commercial account.

The Referee: In other words, no advance credit was given to depositors of this note?

Mr. Gendel: That is correct. Now, is there anything further, Mr. Steinmeyer, that you think we should add to our stipulation?

Mr. Steinmeyer: Yes, I think there is, Mr. Gendel. After the happening on August 19, 1947, I think there should be added to your statement the fact that the company, that is, the Debtor, advised the bank after the close of business on August 19 that it proposed to file a Chapter XI petition on August 20, and when the bank received that advice it then terminated the credit.

Mr. Gendel: We will so stipulate.

Mr. Steinmeyer: One other fact, that I think should be amplified a bit from your statement, and

that is that [98] the Bank of America handled the collection of all commercial items for the Debtor starting in June of 1946 at the time of the extension of credit and that those collections averaged from \$40,000 to \$50,000 per month during the year 1946, and during the year 1947 up to the date of filing the bankruptcy petition, averaged approximately \$150,000 per month.

Mr. Gendel: Yes, we will so stipulate.

Mr. Steinmeyer: Now we will stipulate to those facts for the purpose only of this proceeding to determine, that is to permit the Court to determine whether or not there is a color of title in the bank on this objection to this petition. [99]

State of California,
County of Los Angeles—ss.

I, P. A. Duran, Acting Official Reporter, do hereby certify that the foregoing six (6) pages comprise a true and correct transcript of a portion of the proceedings had in the above entitled matter.

Dated this third day of December, 1947.

/s/ P. A. DURAN,
Acting Official Reporter.

[Endorsed]: Filed Dec. 5, 1947. [100]

In the District Court of the United States, Southern
District of California, Central Division

No. 45,207-B

In the Matter of SALSURY MOTORS, INC., a
corporation, Debtor.

ORDER DENYING PETITION FOR REVIEW
IN RE BANK OF AMERICA—BANKER'S
LIEN LITIGATION

George T. Goggin, as Receiver, heretofore filed objections to the claim of the Bank of America National Trust & Savings Association, and prayer for affirmative relief; after full hearing at which evidence was presented and argument by counsel, the Honorable Hugh L. Dickson, Referee, made findings of fact and conclusions of law and, on March 22, 1948, entered an order overruling the objections of the Receiver and denying the Receiver's prayer for affirmative relief; thereafter, the petition for review of the said order was duly filed and prosecuted by George T. Goggin, as Receiver; Points and Authorities were submitted by the Bank of America National Trust & Savings Association and George T. Goggin; said findings of fact, conclusions of law and points and authorities were fully considered by the undersigned Judge of the United States District Court; the undersigned Judge of the United States District Court being in agreement with the said [106] Referee as to all findings of fact and conclusions of law neces-

sary for the disposition of the matter before the Court; the matter having been taken under submission and having been duly considered,

It Is Now Ordered that the objections of George T. Goggin, as Receiver, be overruled and the order of the said Referee, Honorable Hugh L. Dickson, affirmed, and that this Court hereby confirms, approves and adopts the Findings of Fact and Conclusions of Law of said Referee.

Dated this 19th day of January, 1949.

/s/ C. E. BEAUMONT,
Judge of the United States District Court.

Approved as to form only.

/s/ MARTIN GENDEL,
Of Counsel for George T. Goggin as Receiver.

Judgment entered Jan. 19, 1949. Docketed Jan. 19, 1949, Book 55, Page 292.

EDMUND L. SMITH,
Clerk,

By /s/ C. A. SIMMONS,
Deputy.

[Endorsed]: Filed Jan. 19, 1949. [107]

[Title of District Court and Cause.]

NOTICE OF APPEAL

To the Clerk of the Above Entitled Court:

Notice Is Hereby Given that George T. Goggin, as receiver of the above named debtor, hereby appeals to the United States Court of Appeals, for the Ninth Circuit, from the Order Denying Petition for Review in re Bank of America—Banker's Lien Litigation entered in this Court on January 19, 1949, Judgment Book 55, at page 292, and from the whole thereof.

Dated February 1, 1949.

GENDEL & CHICHESTER,

By /s/ MARTIN GENDEL,

Of Counsel for George T. Goggin, Receiver and Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 2, 1949. [108]

[Title of District Court and Cause.]

APPELLANT'S DESIGNATION OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

George T. Goggin, receiver of the above named debtor, through his counsel, hereby designates the entire record before the District Court, including all the papers, pleadings, and evidence certified to the District Court by the Honorable Hugh L. Dickson, Referee in Bankruptcy, with his Certificate on Re-

view from his order of March 22, 1948, denying objections of the appellant to the claim of the Bank of America National Trust & Savings Association, and denying the appellant's prayer for affirmative relief.

Pursuant to the provisions of Rule 75(o) of the Rules of Civil Procedure for the United States District Court and pursuant to Rule 11 of the Rules of the United States Court of Appeals for the Ninth Circuit, as amended, request is hereby made that the Clerk of the above entitled Court transmit all the original papers in the file dealing with the action or the proceeding in which the appeal has been taken, including the notice of appeal and this [110] designation.

Dated at Los Angeles, California, this 1st day of February, 1949.

GENDEL & CHICHESTER,

By /s/ MARTIN GENDEL,

Of Counsel for Appellant George T. Goggin, Receiver.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Feb. 2, 1949. [111]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 112, inclusive, contain full, true and correct copies of Petition of Debtor Under Chap-

ter XI of the Bankruptcy Act and Approval of Debtor's Petition and Order of Reference Under Section 322 of the Bankruptcy Act and the original Referee's Certificate on Review; Proof of Partially Secured Debt; Petition for Order to Show Cause Against Bank of America re Jacques Power Saw Co.; Order to Show Cause re Bank of America National Trust & Savings Association; Objections of Bank of America, etc., to Jurisdiction of the Court in a Summary Proceeding against said Bank Relating to a Controversy Concerning the Lien and Right of Offset of the Bank on a Promissory Note and the Proceeds Received in Payment Thereof; Memorandum Opinion; Objections to Claim of Bank of America National Trust & Savings Association and Prayer for Affirmative Relief; Notice of Hearing on Objections to Claim of Bank of America National Trust & Savings Association and Prayer by Receiver for Affirmative Relief; Answer of Bank of America National Trust and Savings Association to Objections to Claim and Prayer for Affirmative Relief; Overruling Objections to Jurisdiction and Consolidating Proceedings; Stipulation; Memorandum Opinion on Claim of Bank of America; Petition for Review of Referee's Order of March 22, 1948 Allowing the Claim of Bank of America; Transcript of Hearing on Order to Show Cause on Bank of America; Letter dated April 16, 1948 to Referee Dickson from Martin Gendel; Specifications of Objections to Findings of Fact, Conclusions of Law and Order Allowing Claim; Order Denying Petition for Review in Re Bank of America Banker's Lien Litigation; Notice of Appeal and Designation of Record on Appeal which con-

stitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 10th day of March, A.D. 1949.

(Seal)

EDMUND L. SMITH,
Clerk.

[Endorsed]: No. 12206. United States Court of Appeals for the Ninth Circuit. George T. Goggin, Receiver of the Estate of Salsbury Motors, Inc., Appellant, vs. Bank of America National Trust & Savings Association, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 11, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
For the Ninth Circuit

No. 12206

GEORGE T. GOGGIN, Receiver of Salsbury
Motors, Inc., a corporation, Debtor,

Appellant,

vs.

BANK OF AMERICA NATIONAL TRUST &
SAVINGS ASSOCIATION, a National Bank-
ing Association,

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

Appellant, George T. Goggin, Receiver of Salsbury Motors, Inc., a corporation, debtor, intends to rely on appeal on the following points:

1. The District Court and the Referee erred in overruling the objections of the Receiver-Appellant to the claim of the Bank of America National Trust and Savings Association.

2. The District Court and the Referee erred in denying the Receiver-Appellant's petition for Order to Show Cause against the Bank of America National Trust & Savings Association in re Jacques Power Saw Co.

3. The District Court and the Referee erred in overruling the Receiver-Appellant's prayer for af-

firmative relief against the Bank of America National Trust & Savings Association.

4. The District Court and the Referee erred in allowing the claim of the Bank of America National Trust & Savings Association.

5. The District Court and the Referee made Findings of Fact which were clearly erroneous in that said Findings of Fact were not supported by substantial evidence and were contrary to the evidence.

6. The District Court and the Referee adopted erroneous Conclusions of Law which were and are contrary to the laws of the State of California and contrary to controlling decisions of the United States Supreme Court.

Dated March 18, 1949.

GENDEL & CHICHESTER,

By /s/ MARTIN GENDEL,

Of Counsel for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Mar. 19, 1949. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPELLANT'S DESIGNATION OF RECORD
TO BE PRINTED

Appellant, George T. Goggin, Receiver of Salisbury Motors, Inc., a corporation, debtor, hereby designates the entire record and all the proceedings and evidence certified to the Clerk of this Court by the Clerk of the District Court in connection with the within appeal as material to the consideration of the appeal and appellant hereby requests that the entire record and all the proceedings and evidence be printed.

Dated March 18, 1949.

GENDEL & CHICHESTER,
By /s/ MARTIN GENDEL,
Of Counsel for Appellant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Mar. 19, 1949. Paul P. O'Brien,
Clerk.

